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WHERE: Office of the Federal Register
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RESERVATIONS: 202–523–4538

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–98–005]

Amendment to the Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will amend the Beef Promotion and Research Rules and Regulations (Rules and Regulations) issued under the Beef Promotion and Research Act of 1985 (Act), to clarify requirements for documenting cattle sales transactions for which no assessments are due. This amendment specifically requires the timely filing of Statement of Certification of Non-Producer Status forms to obtain exemption from assessment. Based upon comments received, this final rule reflects changes made to the amendments as proposed.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; Agricultural Marketing Service, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988; the Regulatory Flexibility Act; and the Paperwork Reduction Act

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final rule on small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. The Agricultural Marketing Service (AMS) has determined that this final rule will not have a significant economic impact on a substantial number of small business entities.

In the January 26, 2001, issue of ''Cattle,'' the Department of Agriculture's (Department) National Agricultural Statistics Service estimates that in 2000 there were 1.1 million cattle operations in the United States. The majority of these operations subject to the Beef Promotion and Research Order (Order), 7 U.S.C. 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry as it merely clarifies the timing for filing of the Statement of Certification of Non-Producer Status forms when no assessment is due on cattle sales transactions. The regulations provide for certification of non-producer status for certain transactions. This action specifies the time of filing of the Statement of Certification of Non-Producer Status forms in order to obtain an exemption from paying assessments.

In compliance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this final rule have been previously approved by OMB and were assigned OMB control number 0581–0093.

Background

The Act authorizes the establishment of a national beef promotion and research program. The Order and the Rules and Regulations govern the administration of the program. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board) that is composed of 110 cattle producers and importers. The program is funded by a $1-per-head assessment on producer marketings of cattle in the United States, cattle imported into the United States, and an equivalent amount on imported beef and beef products. In 45 States, Qualified State Beef Councils (QSBC) collect the assessments remitted under the program. QSBCs retain up to half of the assessments they collect for State-directed programs and remit the remainder to the Board. The Board receives all producer assessments in five States with relatively small cattle numbers that do not have QSBCs and all assessments on imported cattle, beef, and beef products.

The domestic assessment, due each time cattle are sold by a producer, is collected by the buyer or ''collecting person'' for remittance to the Board or QSBC. The term ''producer'' is defined in the Order as follows: ''Producer means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than 10 days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.'' 7 CFR 1260.116.

When a person who is not a producer, under the above definition, sells cattle within 10 days of the date the person purchased the cattle, the collecting person is not required to collect the $1 assessment from that person (seller), if the seller provides the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary. Although,

the majority of non-producers provide collecting persons with a Statement of Certification of Non-Producer Status ''at the time of sale,'' the Rules and Regulations do not specify when the Statement of Certification of Non-Producer Status form is due. Board audits of collecting persons' accounting records have revealed transactions in which neither the $1 assessment, nor the Statement of Certification of Non-Producer Status required in lieu of the assessment, was obtained from the seller of the cattle by the collecting person for the transaction.

For the purpose of making it clear that the Statement of Certification of Non-Producer Status form must be filed with the collecting person in a timely manner, it was proposed that § 1260.314(b) of the Rules and Regulations be amended to read as follows: ''(b) Each person seeking non-producer status pursuant to § 1260.116 of this part shall provide to the collecting person on a form approved by the Board and the Secretary a Statement of Certification of Non-Producer Status at the time the collecting person makes payment to the seller of cattle, in lieu of the assessment that would otherwise be due. If the collecting person is a brand inspector, as provided for in § 1260.311, the seller of cattle must provide to the brand inspector a Statement of Certification of Non-Producer Status at the time the physical brand inspection is completed in lieu of the assessment that would otherwise be due.''

On August 28, 1998, AMS published in the **Federal Register** (63 FR 45971) for public comment a proposed rule providing for the above amendment to § 1260.314(b) of the Rules and Regulations.

The Department received two comments concerning the proposed rule. A summary of the comments and the Department's responses are set forth below.

The first commenter urged the Department to withdraw the proposed revisions to the timely filing of Statements of Certification of Non-Producer Status forms. The commenter asserted that the proposed rule lacks merit because the Department and the Board have failed to demonstrate any real need for the revisions to the filing of Statements of Certification of Non-Producer Status.

The Department does not agree with the commenter's assertion. The revisions to the Rules and Regulations are necessary to clarify that documentation of non-producer status is required in conjunction with the transactions. Board audits have revealed that some collecting persons believe the current language permits documentation to be developed months or years after the transactions occurred. The revisions in this final rule are needed to clarify the Rules and Regulations and to ensure compliance with them.

The commenter also asserted that the revisions to the timely filing of Statements of Certification on Non-Producer Status forms could result in confusion and enforcement problems for the marketing sector. The Department believes that the revisions to § 1260.314 in this final rule will not result in any confusion and enforcement problems for the marketing sector. In fact, as discussed further below, the revisions clarify when the Statement of Certification of Non-Producer Status is to be filed.

The commenter stated that groups representing ''collecting persons'' were not consulted prior to development and publication of the proposed rule.

The proposed rule was promulgated in accordance with the provisions of the Administrative Procedure Act, and all members of the public were given a 60-day period to submit comments.

The commenter further stated that the Board ''needs to address the real problems and issues of the beef checkoff.'' The commenter did not give any further explanation for what was meant by this statement.

Finally, the commenter objected to the proposed requirement that the Statement of Certification of Non-Producer Status be filed at the time payment is made to the seller. The commenter stated that in many transactions the seller is not physically present when payment is made by auction markets, dealers, order buyers, feedlots, and packers. The commenter suggested that the final rule take into account current marketing practices, including mailing delays that would prevent filing of the Statement of Certification of Non-Producer Status until several days after payment is made.

The Department believes that the commenter's suggestion has merit. Accordingly, § 1260.314 is revised in this final rule to specify that if the seller is not physically present during a cattle sales transaction in which the seller claims non-producer status, such seller shall deliver to the collecting person an original Statement of Certification of Non-Producer Status within 10 business days of the date the collecting person makes payment to the seller of the cattle.

The second commenter supported the proposed revisions to the Rules and Regulations, and suggested adding language to § 1260.314 to reflect procedures used in several brand inspected States that do not require Statement of Certification of Non-Producer Status forms from those reselling cattle within 10 days of purchase.

The Department agrees with the commenter's suggestion. Several brand inspected States require a brand inspection certificate which shows that the assessment has been deducted less than 10 days prior to resale. Since brand inspection certificates provide documentation acceptable to the Board and the Department that the assessment has been paid less than 10 days prior to resale, it serves as proof of non-producer status under § 1260.314. Consequently, a non-producer status form is not required in these transactions. Section 1260.314 has been revised accordingly in this final rule.

List of Subjects in 7 CFR Part 1260

Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation of part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. Section 1260.314 is amended by redesignating paragraph (c) as paragraph (e), revising paragraph (b), and adding two new paragraphs (c) and (d) to read as follows:

§ 1260.314 Certification of non-producer status for certain transactions.

* * * * *

(b) Each person seeking non-producer status pursuant to § 1260.116 shall provide the collecting person, on a form approved by the Board and the Secretary, with a Statement of Certification of Non-Producer Status at the time the collecting person makes payment to the seller of cattle, in lieu of the assessment that would otherwise be due, except as provided for in paragraphs (c) and (d) of this section.

(c) When the seller of cattle is not physically present during a sales transaction in which the seller claims non-producer status, such seller shall deliver to the collecting person an original Statement of Certification of Non-Producer Status within 10 business days of the date the collecting person makes payment to the seller of the cattle.

(d) If the collecting person is a brand inspector, as provided for in § 1260.311, the seller of cattle claiming non-producer status shall provide to the brand inspector at the time the physical brand inspection is completed, in lieu of the assessment that would otherwise be due, either: a Statement of Certification of Non-Producer Status or a valid brand inspection certificate which shows collection of the assessment by a brand inspector in a transaction which took place not more than 10 days prior to the sale of the cattle.

* * * * *

Dated: May 9, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–12141 Filed 5–14–01; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052–AB91

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Stock Issuances; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611 and 615 on March 28, 2001 (66 FR 16841). In this final rule, we amended our regulations to allow Farm Credit System (System) service corporations to sell stock to non-System entities, provide adequate disclosures to investors in service corporations, and allow System institutions to issue unlimited amounts of certain classes of equities. The purpose of our amendments is to provide System institutions additional opportunities to fulfill their borrowers' needs through service corporations and more efficient issuance of equities related to earnings distributions and transfers of capital. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 14, 2001.

EFFECTIVE DATE: The regulation amending 12 CFR parts 611 and 615 published on March 28, 2001 (66 FR 16841) is effective May 14, 2001.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 9, 2001.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 01–12152 Filed 5–14–01; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–122–AD; Amendment 39–12227; AD 2001–10–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This action requires applying torque to certain tubing fittings of the fire extinguishing systems of various areas of the airplane, and applying torque paint to the fittings. This action is necessary to ensure that certain tubing fittings of the fire extinguishing systems are properly torqued. Improperly torqued tubing fittings of the fire extinguishing systems of the baggage compartment, auxiliary power units (APU), and engines, if not corrected, could become loose and cause the fire extinguisher to inadvertently discharge. Inadvertent discharge of a fire extinguisher could result in reduced fire protection or the inability to extinguish a fire in the baggage compartment, APU, or engine. This action is intended to address the identified unsafe condition.

DATES: Effective May 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2001–NM–122–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or 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: Linda Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that it has received reports of looseness of some tubing fittings of the fire extinguishing systems of the engines located in the pylon inner area. In one event during maintenance, the fire extinguisher discharged into the pylon area. Investigation revealed the possibility that those fittings had been undertorqued during production of the airplanes. This possibility also exists for all other fittings at the fire extinguishing systems.

Improperly torqued tubing fittings of the fire extinguishing systems of the

baggage compartment, auxiliary power units (APU), and engines, if not corrected, could become loose and cause the fire extinguisher to inadvertently discharge. Inadvertent discharge of a fire extinguisher could result in reduced fire protection or the inability to extinguish a fire in the baggage compartment, APU, or engine.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–26–0008, dated December 19, 2000, which describes procedures for applying torque to certain tubing fittings of the fire extinguishing systems in the following areas, as applicable:

1. Inner side of the left-and right-hand pylons of the engines.
2. Tail cone compartment, rear electronic compartment, and baggage compartment.
3. Between the pylon walls and the left- and right-hand engines.
4. APU in the tail cone compartment.

The service bulletin also describes procedures for applying torque paint to the fittings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–02–01, dated February 21, 2001, 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 DAC 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 is being issued to ensure that certain tubing fittings of the fire extinguishing systems are properly torqued. Improperly torqued tubing fittings of the fire extinguishing systems of the baggage compartment, APUs, and engines, if not corrected, could become loose and cause the fire extinguisher to inadvertently discharge. Inadvertent discharge of a fire extinguisher could result in reduced fire protection or the inability to extinguish a fire in the baggage compartment, APU, or engine. This AD requires accomplishment of the actions specified in the service bulletin described previously.

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–122–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–10–02 Empresa Brasileira de Aeronautica, S.A. (EMBRAER): Amendment 39–12227. Docket 2001–NM–122–AD.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–26–0008, dated December 19, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that certain tubing fittings of the fire extinguishing systems are properly torqued, accomplish the following:

Torque and Paint

(a) Within 100 flight hours after the effective date of this AD, apply torque to the tubing fittings of the fire extinguishing system of the engines in the inner side of the left- and right-hand pylons, and apply torque paint to the fittings, per EMBRAER Service Bulletin 145–26–0008, dated December 19, 2000.

(b) Within 400 flight hours after the effective date of this AD, do the actions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, as applicable, per EMBRAER Service Bulletin 145–26–0008, dated December 19, 2000.

(1) For all airplanes: Apply torque to the remaining tubing fittings (i.e., those fittings not indicated in paragraph (a) of this AD) of the engine fire extinguishing system in the tail cone compartment, rear electronic compartment, and baggage compartment, and to the tubing fittings between the pylon walls and the left- and right-hand engines.

(2) For all airplanes: Apply torque to the tubing fittings of the fire extinguishing system of the auxiliary power unit.

(3) For airplanes configured with a Class ''C'' baggage compartment: Apply torque to all tubing fittings of the fire extinguishing system of the baggage compartment.

(4) For all airplanes: Apply torque painting to the tubing fittings.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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 actions shall be done in accordance with EMBRAER Service Bulletin 145–26–0008, dated December 19, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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 2001–02–01, dated February 21, 2001.

Effective Date

(f) This amendment becomes effective on May 30, 2001.

Issued in Renton, Washington, on May 7, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11900 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–49–AD; Amendment 39–12228; AD 2000–03–03 R1]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to General Electric Company CF34 series turbofan engines, that currently requires revisions to the Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF34 series turbofan engines. Those revisions require enhanced inspection of selected critical life-limited parts at each piece-part exposure. The existing AD also requires that an air carrier's approved continuous airworthiness maintenance program incorporate these inspection procedures. This amendment removes inspection requirements for parts removed from engines mounted on-wing. This amendment is prompted by the high removal rate and subsequent piece-part exposure of fan disks due to certain maintenance procedures. This additional exposure has resulted in fan disk focused inspection rates that exceed the intent of the focused inspection initiative. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective June 19, 2001.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (238) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2000–03–03, Amendment 39–11560 (65 FR 5759), which is applicable to General Electric Company CF34 series turbofan engines, was published in the **Federal Register** on August 18, 2000 (65 FR 50468). The action removed inspection requirements for parts removed from engines mounted on-wing.

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

Change to Aircraft Model Designation

One comment asks that the Applicability Section be changed to reflect the Department of Transportation (DOT) aircraft model designation rather than the Bombardier aircraft model designation.

The FAA agrees. The model designation has been changed to reflect the DOT designation.

Remove ASB Reference

A comment requests that the FAA remove the reference to Alert Service Bulletin (ASB) 72–A0103 contained in subparagraph (A) of the change to the instructions for continue airworthiness (ICA's).

The FAA agrees. The language of the ASB has subsequently been incorporated into the manual cited, SEI–756, chapter 72–00–00. Therefore, reference to the ASB in the required change to the ICA's is not needed.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–11560 (65 FR 5759, February 7, 2000), and by adding a new airworthiness directive (AD), Amendment 39–12228 to read as follows:

2000–03–03 R1 General Electric Company: Amendment 39–12228. Docket 99–NE–49–AD. Revises AD 2000–03–03, Amendment 39–11560.

Applicability: General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines, installed on but not limited to Bombardier Canadair CL 600–2B19(RJ) aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the CF34 Engine Maintenance Program, Chapter 5–21–00, of the GE CF34 Series Turbofan Engine Manual, SEI–756. For air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

''9. *CF34–3A1 and CF34–3B1 Engine Maintenance Program—Mandatory Inspection Requirements.*

(A) This procedure is used to identify specific piece-parts that require mandatory inspections that must be accomplished at each piece-part exposure using the applicable Chapters referenced in Table 804 for the inspection requirements. The inspection requirements listed in Table 804 are not required for any piece-part exposure resulting when the engine remains on-wing while performing maintenance practice, special procedure Number 41 listed in SEI–756, chapter 72–00–00.

(B) Piece-part exposure is defined as follows: Note: Fan disk piece-part includes the fan disk with the 56 fan pin bushings installed.

(1) For engines that utilize the ''On Condition'' maintenance requirements: The part is considered completely disassembled to the piece-part level when done in accordance with the disassembly instructions in the GEAE authorized overhaul Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(2) For engines that utilize the ''Hard Time'' maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions used in the ''Minor Maintenance'' or ''Overhaul'' instructions in the GEAE engine authorized Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

C. Refer to Table 804 below for the mandatory inspection requirements.

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part nomenclature	Manual/chapter section/subject	Mandatory Inspection
Fan Disk (all)	72–21–00, INSPECTION	All areas (FPI);[1] Bores (ECI).[2]
Stage 1 high pressure turbine (HPT) Rotor Disk (all).	72–46–00, INSPECTION	All areas (FPI);[1] Bores (ECI);[2] Boltholes (ECI);[2] Air Holes (ECI).[2]
Stage 2 HPT Rotor Disk (all)	72–46–00, INSPECTION	All Areas (FPI);[1] Bores (ECI).[2]
(a) Boltless Rim Configuration		Boltholes (FPI);[1] Air Holes (FPI).[1]
(b) Bolted Rim Configuration		Boltholes (ECI);[2] Air Holes (ECI).[2]
HPT Rotor Outer Torque Coupling (all).	72–46–00, INSPECTION	All areas (FPI);[1] Bore (ECI)[2]

[1] FPI = Fluorescent Penetrant Inspection Method.
[2] ECI = Eddy Current Inspection.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding the provisions of section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the CF34 Engine Maintenance Program, Chapter 5–21–00, of the General Electric Company, CF34 Series Turbofan Engine Manual, SEI–756.

Alternative Method of Compliance

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

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

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.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34 Series Turbofan Engine Manual.

This amendment becomes effective on May 30, 2001.

Issued in Burlington, Massachusetts, on May 7, 2001.

Francis A. Favara,

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

[FR Doc. 01–12005 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–453 ; RE: Notice No. 905]

RIN 1512–AA07

Long Island Viticultural Area (2000R–219P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final Rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area to be known as ''Long Island,'' located in Nassau and Suffolk counties, New York. This action is the result of a petition filed by Richard Olsen-Harbich on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields Vineyards.

The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown. This enables consumers to better identify the wines they may purchase.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–9347).

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added a new part 9 to 27 CFR, American Viticultural Areas, for providing the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

ATF does not wish to give the impression by approving the Long Island viticultural area that it is approving or endorsing the quality of wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from Long Island.

What Is the Definition of an American Viticultural Area?

27 CFR 4.25a(e)(1), defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Long Island Petition

ATF received a petition from Richard Olsen-Harbich on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields Vineyards, proposing to establish a viticultural area in Nassau and Suffolk counties, New York, to be known as ''Long Island.'' This viticultural area

encompasses the two existing appellations, ''The Hamptons, Long Island'' and ''North Fork of Long Island,'' as described in 27 CFR 9.101 and 9.113, as well as the remaining areas of Nassau and Suffolk counties, New York. The Long Island viticultural area does not include Kings County (Brooklyn) or Queens County, New York.

The Long Island viticultural area encompasses approximately 1,170 square miles or 749,146 acres. Over 2,500 acres of vineyards are currently planted in the viticultural area and the area presently boasts thirty-eight vineyard and/or winery businesses.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 905, in the **Federal Register** on November 6, 2000, (65 FR 66518), proposing the establishment of the Long Island viticultural area. The notice requested comments from interested persons by January 5, 2001.

Comments on Notice of Proposed Rulemaking

Seven comments were received as a result of Notice No. 905, including a comment from United States Senator Charles E. Schumer, and a comment from several Members of the Assembly from the State of New York. All of the comments fully supported the establishment of the Long Island viticultural area. Senator Schumer emphasizes his support by stating ''no other region in the Eastern United States has the quality of soil, length of growing season, moderate winter temperatures, and necessary amount of natural precipitation as Long Island.''

What Name Evidence Has Been Provided?

The petitioner offered the following as evidence that the name ''Long Island'' refers to the area. The name ''Long Island'' has been in continuous use from 1616 to the present to represent the island on which the viticultural area is located. However, the *Long Island Travel Guide* (1997) states that the name ''Long Island'' is commonly known to mean Nassau and Suffolk counties exclusively. Also, the 1999 *Long Island Almanac* (33rd ed.) covers Nassau and Suffolk counties only.

The *Bell Atlantic White Pages* lists approximately 1,150 business telephone listings in Suffolk and Nassau counties using the term ''Long Island.'' By comparison, the *White Pages* in Brooklyn and Queens reflect almost no usage of the term ''Long Island'' to describe businesses located there. In addition, the petitioner submitted, as evidence, several maps, newspaper, and magazine articles which refer to the area as ''Long Island.''

What Boundary Evidence Has Been Provided?

The petitioner has submitted, as boundary evidence, the following maps on which the name ''Long Island'' prominently appears:

1. U.S.G.S. Map (New York, N.Y.; N.J.; Conn. 1960 (revised 1979));
2. U.S.G.S. Map (Hartford, Conn.; N.Y.; N.J.; Mass. 1962 (revised 1975)); and
3. U.S.G.S. Map (Providence, R.I.; Mass.; Conn.; N.Y. 1947 (revised 1969)).

The Long Island viticultural area is located on the eastern part of Long Island, New York. The area is surrounded by the Queens County line on the west, Long Island Sound to the north, the Atlantic Ocean to the south and Block Island Sound and Fishers Island Sound to the east.

Long Island, New York, has four counties: Kings (commonly known as Brooklyn), Queens, Nassau, and Suffolk. The petitioner contends that the appropriate western boundary for the viticultural area is the Queens County line because Kings and Queens counties are not suitable for viticultural purposes. Commercial farms no longer exist in Kings or Queens counties; these counties are densely populated urban areas. In addition, the name ''Long Island'' is used in common parlance to refer to the Nassau and Suffolk counties exclusively.

What Evidence Relating to Geographical Features Has Been Provided?

- Soil:

The record demonstrates that the soils of the Long Island viticultural area are glacial in origin. In general, the soils of the viticultural area contain a greater percentage of sand and gravel and a lower percentage of silt, loam and clay than in the soil associations and series found in bordering areas. Soils in the Long Island viticultural area lack any real percentage of natural limestone when compared to surrounding regions. The soils of the viticultural area are more acidic and make an agricultural liming program indispensable to any vineyard operation. Because of this factor, the soils of the viticultural area are also slightly lower in natural fertility and water-holding capacity than neighboring areas. According to the petitioner, this difference in soil types leads to a very unique and distinct ''terroir'' for the Long Island viticultural area—-sandy loams will warm up faster, drain better, and allow deeper root penetration than soils in bordering areas, which contain greater amounts of silt, clay and rock.

The soils of the Long Island viticultural area are fairly uniform in that they are predominately glacial till and glacial outwash in nature, are very low in organic matter, and contain few, if any, large mineral deposits or exposed rock formations. Many of the soil series including the Wallington, Sudbury, Scio, Montauk, Plymouth and Riverhead Soil Series are common throughout the entire viticultural area.

One of the most distinctive features of the Long Island viticultural area is the vast quantity of sandy loam soil deposited during the Pleistocene Epoch of the Quarternary Period. This soil was deposited during the last four major glacial stages of this Epoch. From oldest to youngest they are: Nebraskan, Kansan, Illoian, and Wisconsin. Because of this, the area between the surface soil and bedrock areas is several hundred feet.

By contrast, the nearest surface bedrock begins near the Queens County line. Some areas of Queens show exposed bedrock formations while the bedrock layer in the Long Island viticultural area can be as much as 500 feet below the surface. For this reason, the soils found in Queens County are much shallower than the typical soils found in the viticultural area and are not suitable for growing grapes. In addition, Queens County, which is considered part of New York City, is completely urbanized and contains essentially no agricultural land. Most of the soil series now identified in Queens are known as *anthropgenic* soils. These soils are described as having properties that are dominantly derived from human activities. Out of the 30 soil types found in the region of Queens County, only three are also found in the Long Island viticultural area.

- Topography and Terrain:

Evidence submitted by the petitioner shows that the Long Island viticultural area is unique from its bordering regions in that it lacks any real undulations, rock outcrops or muckland areas. By contrast, the Highland Basin, located immediately to the west-northwest of the Long Island viticultural area and encompassing the areas of northern New Jersey, the Hudson Highlands region of southern New York (including Manhattan, Westchester, the Bronx, and parts of Brooklyn and Staten Island), and upland parts of Connecticut, is a rugged, hilly-to-mountainous terrain. Similarly, the Newark and Atlantic Basins, located directly to the northeast and southwest of the viticultural area,

contain characteristic sedimentary sandstones and mudrocks that usually bear a red or brownish appearance from an abundance of iron oxide minerals (hematite and limonite). None of these geologic formations exist in the Long Island viticultural area.

• Climate:

There is evidence in the record showing that the moderating influence of the Long Island viticultural area's surrounding water is evident in the temperature data. In terms of average temperatures, the viticultural area shows the highest average annual winter temperature compared to the surrounding areas. The Long Island viticultural area's average low temperature over thirty years is 43.5 degrees Fahrenheit (43.5°F), 2.5°F warmer than the area of Westchester County and downstate New York, and 2.2°F warmer annually than the average from New Jersey. The Long Island viticultural area is also over 4°F warmer on average than Connecticut.

The Long Island viticultural area also has the least extreme winter low temperatures than its surrounding areas with the lowest average being −5.67°F. New Jersey was 1.63°F colder at −7.3°F. Westchester/Downstate New York and Connecticut were seen to have winter low temperatures considerably colder than the Long Island viticultural area. Connecticut can experience temperatures as low as −13.5°F which is 7.83°F colder than the Long Island viticultural area. Westchester/Downstate New York proved to be the coldest with low temperatures reaching −15.3°F in some years which is 9.63°F colder than the Long Island viticultural area.

Based on the standard University of California at Davis (UCD) temperature summation definition of climatic regions or zones, the Long Island viticultural area would appear to fall into high Region II (less than 3,000 degree days). Connecticut on the average is a borderline Region II with some years having Region I (less than 2,500 degree days) conditions. New Jersey is solidly classified as a Region III (less than 3,500 degree days), with some locations approaching Region IV (less than 4000 degree days) status in warmer years. The Long Island viticultural area historically has an average of 166 more degree-days than Westchester/Downstate NY and as much as 324 more degree-days than Connecticut.

On average, the Long Island viticultural area experiences 204 frost-free days during the growing season. This is 31 days longer than New Jersey, 37 days longer than Westchester/Downstate NY and as much as 50 days longer than the Connecticut average. The Long Island viticultural area can therefore have as much as four to seven weeks more growing season than any of the surrounding land masses.

On an average annual basis, the Long Island viticultural area has the lowest levels of precipitation of all the surrounding areas with 42 inches annually. The annual difference is 3.4 inches less than Westchester/Downstate NY, 3.8 inches less than New Jersey and 4.1 inches less than Connecticut. The reason for this difference is attributed to the moderating influence of Long Island Sound waters.

3. Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

4. Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.170 to read as follows:

§ 9.170 Long Island

(a) Name. The name of the viticultural area described in this section is ''Long Island.''

(b) Approved Maps. The appropriate maps for determining the boundary of the Long Island viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

(1) ''New York, N.Y.; N.J.; Conn.,'' 1960 (revised 1979);

(2) ''Hartford, Conn.; N.Y.; N.J.; Mass.,'' 1962 (revised 1975); and

(3) ''Providence, R.I.; Mass.; Conn.; N.Y.,'' 1947 (revised 1969).

(c) Boundaries. The Long Island viticultural area includes approximately 1,170 square miles or 749,146 acres and is made up of the counties of Nassau and Suffolk, New York, including all off shore islands in those counties.

Bradley A. Buckles,

Director.

Approved: April 19, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–12161 Filed 5–14–01; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends

the regulations to adopt interest assumptions for plans with valuation dates in June 2001. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during June 2001, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during June 2001, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during June 2001.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.60 percent for the first 20 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent an increase (from those in effect for May 2001) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for May 2001) of 0.25 percent for the period during which a benefit is in pay status and the seven-year period directly preceding the benefit's placement in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2001, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 92, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*		*	*
92	6–1–01	7–1–01	5.00	4.25	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 92, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*		*	*
92	6–1–01	7–1–01	5.00	4.25	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
June 2001	.0660	1–20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of May 2001.

Joseph H. Grant,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–12198 Filed 5–14–01; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

Environmental Impact Analysis Process (EIAP); Correction

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule; correction.

SUMMARY: The Department of the Air Force published in the **Federal Register** of March 28, 2001, a document concerning correcting amendments. This document corrects the inadvertent change to correcting amendment 17.

DATES: Effective on May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bush (HQ USAF/ILEB), 1260 Air Force Pentagon, Washington, DC 20330–1260, (703) 604–0553.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–7671 published on March 28, 2001 (66 FR 16868) make the following correction. On page 16868, correcting amendment 17, § 989.18, paragraph (a), third to last sentence correct ''AF/ILEV'' to read ''USAF/ILEV.''

Dated: May 10, 2001.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–12200 Filed 5–14–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–01–005]

RIN 2115–AE47

Drawbridge Operation Regulation; Illinois Waterway, Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4 and the Ruby Street Bridge, mile 288.7, Illinois Waterway. The drawbridges, with the exception of the Jefferson Street Bridge, will be allowed to remain closed to navigation from 7:30 a.m. to 9 a.m. and 4 p.m. to 5:30 p.m., Monday through Saturday. The Jefferson Street Bridge will remain in the open-to-navigation position. This temporary rule is issued to facilitate land traffic management while emergency repairs are made to the Jefferson Street Bridge.

DATES: This rule is effective from 7:30 a.m., March 30, 2001 until 7:30 a.m. on July 2, 2001.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, Telephone (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published and good cause exists for making this rule effective in less than 30 days from publication. The change has been implemented to address the emergency situation resulting in extensive damage to the Jefferson Street Bridge caused by a vessel allision. Thus, following normal rule making procedures would be impractical. Delaying implementation of

the regulation will not adversely impact navigation; however, it would result in unnecessary prolonged traffic management problems within the City of Joliet, Illinois.

Background and Purpose

On February 21, 2001 the Jefferson Street Bridge, mile 287.9, Illinois Waterway in Joliet, Illinois was struck and seriously damaged by a vessel. The allision requires the Jefferson Street Bridge to remain in the open-to-navigation position until repairs are completed. It is estimated that it will take four months to complete the repairs. The Jefferson Street Bridge is one of five bascule leaf drawbridges within Joliet that carry vehicular traffic across the Illinois Waterway. The current regulations permit the bridges to remain closed to navigation during commuter hours of 7:30 a.m. to 8:30 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Saturday. Damage to the Jefferson Street Bridge prevents its use by highway traffic and has increased traffic levels on the other bridges and travel time between bridges. The temporary rule was requested by the Illinois Department of Transportation in order to accommodate the additional vehicular traffic that has been diverted to the four remaining operable bridges.

Discussion of Temporary Rule

The five Joliet area drawbridges have a minimum vertical clearance of 16.5 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draws of all Illinois Waterway bridges within Joliet open on signal for passage of river traffic, except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m., Monday through Saturday. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators who do not object. Extending the morning drawbridge closure period by 30 minutes and the afternoon closure period by 30 minutes during the week, now until July 2, 2001, will not adversely impact navigation. It will, however, significantly facilitate traffic management in the City of Joliet.

Regulatory Evaluation

This 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 polices and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be minimal. A full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this 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 temporary rule only impacts vessel traffic for one hour a day Monday through Saturday during the spring and early summer months. Although this timeframe coincides with part of the navigation season, commercial interests can accommodate this restriction in their schedules. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity, and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, telephone (314) 539–3900, extension 378.

Small businesses may send comments on the action of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this 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 having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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 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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32), of Commandant Instruction M16475.1C, this rule is categorically excluded from further

environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

Bridges.

For the reason discussed in the preamble, the Coast Guard amends 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. Sec. 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. Effective 7:30 a.m. on February 26, 2001 through 7:30 a.m. on July 2, 2001, paragraph (c) of § 117.393 is suspended and a new paragraph (e) is added to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

(e) The draws of the McDonough Street Bridge, mile 287.3; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4 and the Ruby Street Bridge, mile 288.7; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m. Monday through Saturday. The Jefferson Street Bridge shall remain in the open-to-navigation position during the period February 26, 2001 to July 2, 2001 for repairs.

Dated: March 30, 2001.

J.C. Van Sice,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 01–12115 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 141 and 143

[FRL–6974–7]

RIN–2040–AD59

Withdrawal of Direct Final Rule; Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations; Methods Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comments, we are withdrawing the direct final rule entitled ''Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations; Methods Update; Direct Final Rule.'' We published the direct final rule (66 FR 3466) with a companion proposed rule (66 FR 3526) on January 16, 2001. We stated in the direct final rule that if we received adverse comment by March 19, 2001, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comments on the direct final rule. We will address those comments in a subsequent action based on the parallel proposal. The proposed rule stated that we would not institute a second comment period on this action.

DATES: As of May 15, 2001, EPA withdraws the direct final rule published at 66 FR 3466 on January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Maria Gomez-Taylor, Ph.D., Engineering and Analysis Division (4303), USEPA Office of Science and Technology, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460 (phone: 202–260–1639; e-mail: Gomez-Taylor.Maria@epa.gov).

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on January 16, 2001, to approve the use of updated versions of test procedures (*i.e.*, analytical methods) for the determination of chemical, radiological, and microbiological pollutants and contaminants in wastewater and drinking water. These updated versions of analytical methods have been published by one or more of the following organizations: American Society for Testing Materials, United States Geological Survey, United States Department of Energy, American Public Health Association, American Water Works Association, and Water Environment Federation. Previously approved versions of the methods would remain approved. The rule also corrected method citations and minor typographical errors in EPA's regulations for test procedures. EPA published a companion proposed rule (66 FR 3526) on the same date as the direct final rule.

The companion proposed rule invited comment on the substance of the direct final rule and stated that if adverse comments were received by March 19, 2001, the direct final rule would not become effective and a document would be published in the **Federal Register** to withdraw the direct final rule before the May 16, 2001, effective date. The EPA subsequently received adverse comments on the final rule. EPA plans to address those comments in a subsequent action. Today's action withdraws the direct final rule; the updated versions of the test procedures are not approved under 40 CFR parts 136, 141, or 143.

List of Subjects

40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Radiation Protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Water supply.

Dated: May 7, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–12045 Filed 5–14–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[WT Docket No. 00–77; FCC 01–122]

Accommodation of Advanced Digital Communications in the 117.975–137 MHz Frequency Band and Implementation of Flight Information Services in the 136–137 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to (1) permit the Federal Aviation Administration (FAA) to use five additional channels in the 136–136.475 MHz frequency band; (2) authorize the implementation of Flight Information Services-Broadcast (FIS–B) in the 136–137 MHz band; (3) accommodate digital communications systems throughout the 117.975–137 MHz aeronautical radio spectrum; and (4) clarify that five channels previously reserved for special purpose aeronautical enroute operations in the Gulf of Mexico Region—136.775 MHz, 136.800 MHz, 136.825 MHz, 136.850 MHz and 136.875 MHz—are no longer so reserved, and thus may be licensed for general purpose aeronautical enroute operations without geographical limitation. The Commission has adopted these amendments in response to petitions for rulemaking filed by the Small Aircraft Manufacturers Association and the FAA, respectively, requesting that the Commission amend its rules to permit the implementation of FIS–B and other digital communications systems, and in response to comments on those petitions by Aeronautical Radio, Inc. and other organizations representing the aviation industry. These rule amendments will enhance the safety of aviation by alleviating spectrum congestion in the aeronautical radio frequency bands and by paving the way for the introduction of FIS–B and other new digital communications services.

EFFECTIVE DATE: Effective June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Report and Order (R&O),* FCC 01–122, adopted on April 5, 2001, and released on April 13, 2001. The full text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Summary of Report and Order

2. Based on the record in this proceeding, we conclude that the 136–137 MHz frequency band should remain allocated for non-Government use on a primary basis, but that the FAA should have access to the five channels in that frequency band that have been held in reserve, 136.100 MHz, 136.200 MHz, 136.275 MHz, 136.375 MHz, and 136.475 MHz. Maintaining the existing allocation will protect the private sector's current use of the 136–137 MHz frequencies for aircraft operational control communications without having a negative impact on the FAA's existing rights to use the lower channels on a shared basis for air traffic control purposes. In addition, the existing allocation of the band remains consistent with the Final Acts of the 1979 and 1987 World Administrative Radio Conferences. We also believe that the public interest will be served by extending the FAA's existing shared access to 136–137 MHz spectrum to include the specified additional five frequencies. This action will permit the deployment of Flight Information Services-Broadcast (FIS–B) to go forward as contemplated by the FAA and the civil aviation industry.

3. We also conclude that we should accommodate digital communications in the 117.975–137 MHz band and allow the use of both VHF Digital Link Mode 2 and VHF Digital Link Mode 3 technology throughout the band without limitation. This action will help to alleviate congestion in the VHF aeronautical spectrum and will permit the introduction of FIS–B and other advanced services that will enhance the safety of flight. We also believe that placing no restrictions on the types of digital technologies that may operate in the 117.975–137 MHz band will promote flexibility and efficiency during the transition to digital aviation communications systems. It will allow the FAA to move ahead with its plans to deploy a VHF Digital Link Mode 3 system in the near future, while at the same time addressing aviation industry concerns that the significant investment in VHF Digital Link Mode 2 technology not be stranded.

4. We further conclude that FIS–B should be authorized in the 136–137 MHz band. The desire to accommodate FIS–B in the 136–137 MHz band was a primary impetus for this rulemaking proceeding, and all parties agree that deployment of FIS–B will serve the public interest. This action paves the way for the implementation of a new digital data service that will enhance flight safety in the frequency band identified by both the FAA and the industry as most suitable for that service. We designate as FIS–B frequencies the four frequencies identified by the FAA and the civil aviation industry in their pleadings and, consistent with the definition of FIS–B as a ground-to-air service, we will prohibit the use of the FIS–B frequencies for transmissions from aircraft. Prohibiting aircraft transmission will ensure that FIS–B is used for its intended purpose, will promote spectrum efficiency, and will minimize the time for needed for aircraft reception of an entire FIS–B data transmission.

5. Finally, we clarify that the reservation of six channels—136.750 MHz, 136.775 MHz, 136.800 MHz, 136.825 MHz, 136.850 MHz and 136.875 MHz—for special purpose aeronautical enroute services (helicopter flight following systems) in the Gulf of Mexico Region has expired, and we make five of the channels, all but 136.750 MHz, available for general purpose aeronautical enroute service both inside and outside the Gulf of Mexico Region. The reservation of these channels for helicopter flight following systems in the Gulf of Mexico Region expired on January 1, 1994. Of the six channels, only 136.750 MHz was licensed for a helicopter flight following system prior to the January 1, 1994, expiration date. Accordingly, the frequency 136.750 MHz should remain designated for special purpose enroute services in the Gulf of Mexico Region. Removing the restriction on the five other channels is consistent with previous FCC determinations and will provide needed additional spectrum resources for general purpose aeronautical enroute service.

Final Regulatory Flexibility Analysis (FRFA)

6. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM),* 65 FR 41032, July 3, 2000, prepared in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IRFA. This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the *Report and Order*

7. Our objective in this proceeding is to address increasing spectrum congestion within the 117.975–136 MHz band stemming from increasing air traffic control communications requirements that cause frequency assignments in this band to grow about four percent annually. To alleviate this congestion in spectrum used for aviation communications vital to the safety of flight, while providing the Federal Aviation Administration (FAA) with the latitude it needs to meet its statutory role in administering the civil aviation communications spectrum, there needs to be a transition to new digital communications technology. The *Report and Order* and the rules adopted therein accommodate this need by revising technical requirements so as to permit the introduction of new digital aviation communication systems in the 117.975–136 MHz band generally, and the introduction specifically of a new digital data service known as Flight Information Service-Broadcast (FIS–B) on four channels in the 136–137 MHz portion of the band. The adopted rules further alleviate problems of spectrum scarcity in the 136–137 MHz band by giving the FAA shared access to five additional frequencies between 136.000 MHz and 136.475 MHz and by clarifying the availability for general purpose aeronautical enroute service communications of five frequencies between 136.750 MHz and 136.875 MHz, inclusive.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. No comments were filed in direct response to the IRFA.

III. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

9. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions, or entities. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA, and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

10. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. The definition of ''small governmental jurisdiction'' is one with a population of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and, of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

11. The rules adopted in this *Report and Order* will affect small businesses that use, manufacture, design, import, or sell transceivers or other radio equipment intended to operate in the frequency band 117.975–137 MHz for the provision of aviation communications. There are no Commission-imposed requirements, however, for any entity to use these products. The adopted rules will benefit small entities that use such equipment, moreover, because they will enhance the safety and efficiency of aircraft navigation. At this time, the Commission does not have access to data that would permit a meaningful estimate of the number of small entities potentially affected by the adopted rules. Therefore, we will use the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, manufacturers of transceivers and radio equipment must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of transceivers and radio equipment or how many are independently owned and operated.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions taken in this rulemaking proceeding.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The rules adopted in the *Report and Order* do not impose any new reporting or compliance requirements, but only permit additional uses of existing Aviation Radio Service frequencies and the establishment of a new service. The rules adopted will accommodate the deployment of new digital transceivers designed to operate in the VHF aeronautical frequency bands, but the Commission has not specified design standards for such equipment; the *Report and Order* affects only the technical, performance standards for the use of the frequencies at issue. These rules reflect, moreover, a consensus among the FAA and the civil aviation industry regarding the best means of implementing FIS–B and other advanced digital aviation communications services. No parties commenting on the *NPRM* recommended any significant alternatives to the rules adopted.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Adopted Rules

14. None.

Report to Congress: The Commission will send a copy of this *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will end a copy of this *Report and Order,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

15. Authority for issuance of this *Report and Order* is contained in sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302, 303(f) and (r), 337.

16. Pursuant to sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302, 303(f) and (r), 337, that parts 2 and 87 of the Commission's Rules, 47 CFR parts 2 and 87, ARE AMENDED as set forth in appendix B, effective thirty days after publication of this *Report and Order* in the **Federal Register**.

17. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Radio; Telecommunications.

47 CFR Part 87

Air transportation; Radio.

Federal Communications Commission.

William F. Caton,

Deputy, Secretary.

Final Rules

For reasons discussed in the preamble, Title 47 of the Code of Federal Regulations, parts 2 and 87 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106 is amended by revising footnote US244 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

United States (US) Footnotes

* * * * *

US244 The band 136.000–137.000 MHz is allocated to the non-Federal Government aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136.000, 136.025, 136.050, 136.075, 136.100, 136.125, 136.150, 136.175, 136.200, 136.225, 136.250, 136.275, 136.300, 136.325, 136.350, 136.375, 136.400, 136.425, 136.450, and 136.475 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation stations (AWOS), automatic terminal information services (ATIS), flight information services-broadcast (FIS–B), and airport control tower communications. Existing operational meteorological satellites in the band 136–137 MHz may continue to operate on a not-to-interfere basis to aeronautical mobile (R) stations, until January 1, 2002. No new assignments will be made to stations in the meteorological-satellite service.

* * * * *

PART 87—AVIATION SERVICES

3. The authority citation for Part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

4. In § 87.131, amend the table by revising the entries for Aeronautical enroute and aeronautical fixed, Airport control tower, and Aircraft (Communication) to read as follows:

§ 87.131 Power and emissions.

* * * * *

Class of station	Frequency band/frequency	Authorized emission(s) [9]	Maximum power [1]
* * *	*	* *	*
Aeronautical enroute and aeronautical fixed	HF	R3E, H3E, J3E, J7B, H2B	6 kw.
	HF	A1A, F1B, J2A, J2B	1.5 kw.
	VHF	A3E, A9W, G1D	200 watts.[2]
* * *	*	* *	*
Airport control tower	VHF	A3E, G1D, G7D	50 watts.
	Below 400 kHz	A3E	15 watts.
* * *	*	* *	*
	Aeronautical Frequencies		
Aircraft (Communication)	UHF	F2D, F9D, F7D	25 watts.
	VHF	A3E, A9W, G1D, G7D	55 watts.
	HF	R3E, H3E, J3E, J7B, H2B, J7D, J9W	400 watts.
	HF	A1A, F1B, J2A, J2B	100 watts.
* * *	*	* *	*
* * *	*	* *	*

[1] The power is measured at the transmitter output terminals and the type of power is determined according to the emission designator as follows:

(i) Mean power (pY) for amplitude modulated emissions and transmitting both sidebands using unmodulated full carrier.

(ii) Peak envelope power (pX) for all emission designators other than those referred to in paragraph (i) of this note.

[2] Power and antenna height are restricted to the minimum necessary to achieve the required service.

* * * * * * *

[9] Excludes automatic link establishment.

5. In § 87.133, amend the table in paragraph (a) by revising the heading for (5) Band—100–137 MHz to read (5) Band—108–137 MHz, and by revising the entries below that heading for Aeronautical stations and Aircraft and other mobile stations in the Aviation Services and by adding notes 12 and 13 to the table to read as follows:

§ 87.133 Frequency stability.

(a) * * * * *

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations	Tolerance [1]	Tolerance [2]
* * * * * * *		
(5) Band—108 to 137 MHz:		
Aeronautical stations	[4] 50	[12] 20
* * * * * * *		
Aircraft and other mobile stations in the Aviation Services	[5] 50	[13] 30
* * * * * * *		

[1] This tolerance is the maximum permitted until January 1, 1990, for transmitters installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in 10^6 unless shown in Hertz (Hz).

[2] This tolerance is the maximum permitted after January 1, 1985, for new and replacement transmitters and to all transmitters after January 1, 1990. Tolerance is indicated in partS in 10^6 unless shown in Hertz (Hz).

* * * * * * *

[4] The tolerance for transmitters approved between January 1, 1966, and January 1, 1974, is 30 parts in 10^6. The tolerance for transmitters approved after January 1, 1974, and stations using offset carrier techniques is 20 parts in 10^6.

[5] The tolerance for transmitters approved after January 1, 1974, is 30 parts in 10^6.

* * * * * * *

[12] For emissions G1D and G7D, the tolerance is 2 parts per 10^6.

[13] For emissions G1D and G7D, the tolerance is 5 parts per 10^6.

* * * * * * *

6. In § 87.137, amend the table in paragraph (a) by adding an additional entry for G1D immediately below the existing entries for G1D to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz)		
		Below 50 MHz	Above 50 MHz	Frequency deviation
* * * * * * *				
G1D	14K0G1D		25	
* * * * * * *				

7. Amend § 87.139 by adding new paragraph (k) to read as follows:

§ 87.139 Emission limitations.

* * * * *

(k) For VHF aeronautical stations and aircraft stations operating with G1D or G7D emissions:

(1) The amount of power measured across either first adjacent 25 kHz channel shall not exceed 0 dBm.

(2) The amount of power measured across either second adjacent channel share less than −25 dBm and the power measured in any other adjacent 25 kHz channels shall monotonically decrease at a rate of at least 5 dB per octave to a maximum value of −52 dBm.

(3) The amount of power measured over a 16 kHz channel bandwidth centered on the first adjacent 25 kHz channel shall not exceed −20 dBm.

8. In § 87.173, amend the table in paragraph (b) by revising the entries from 136.00–136.075 MHz through 136.975 MHz to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of station	Remarks
* * * * * * *			
136.000–136.400 MHz	O, S	MA, FAC, FAW	Air traffic control operations; 25 kHz channel spacing.
136.425 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.450 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.475 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.500–136.875 MHz	I	MA, FAE	Domestic VHF; 25 kHz channel spacing.
136.900 MHz	I	MA, FAE	International and domestic VHF.
136.925 MHz	I	MA, FAE	International and domestic VHF.

Frequency or frequency band	Subpart	Class of station	Remarks
136.950 MHz	I	MA, FAE	International and domestic VHF.
136.975 MHz	I	MA, FAE	International and domestic VHF.
* * *	*	*	* * *

9. Amend § 87.187 by adding new paragraph (dd) to read as follows:

§ 87.187 Frequencies.

* * * * *

(dd) The frequencies 136.425, 136.450, 136.475, and 136.500 MHz are designated for flight information services-broadcast (FIS–B) and may not be used by aircraft for transmission.

10. In § 87.263, amend by revising paragraphs (a)(1) and (a)(5) to read as follows:

§ 87.263 Frequencies.

(a) *Domestic VHF service.* (1) Frequencies in the 128.8125–132.125 MHz and 136.4875–137.00 MHz bands are available to serve domestic routes, except that the frequency 136.750 MHz is available only to aeronautical enroute stations located at least 288 kilometers (180 miles) from the Gulf of Mexico shoreline (outside the Gulf of Mexico region). The frequencies 136.900 MHz, 136.925 MHz, 136.950 MHz and 136.975 MHz are available to serve domestic and international routes. Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements.

* * * * *

(5) The frequency 136.750 MHz is available in the Gulf of Mexico Region to serve domestic routes over the Gulf of Mexico and adjacent coastal areas. Assignment of this frequency in the Gulf of Mexico Region shall be to licensees first licensed on this frequency in the Gulf of Mexico Region prior to January 1, 1994, their successors and assigns, and is not subject to the conditions in § 87.261(c) and paragraph (a)(2) of this section. For the purpose of this paragraph, the Gulf of Mexico Region is defined as an area bounded on the east, north, and west by a line 288 km (180 miles) from the Gulf of Mexico shore line. Inland stations must be located within forty-eight kilometers (30 miles) of the Gulf of Mexico shore line.

* * * * *

[FR Doc. 01–12162 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 96–98, 99–68; FCC 01–131]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on remand and report and order.

SUMMARY: In this final rule, the Commission reconsiders the proper treatment of telecommunications traffic delivered to Internet service providers (ISPs) for purposes of inter-carrier compensation. The Commission reaffirms its previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic, in particular, information access, subject to section 201 of the Communications Act of 1934, as amended (the Act), and the Commission establishes an appropriate cost recovery mechanism for the exchange of such traffic.

DATES: The amendments to 47 CFR part 51 are effective June 14, 2001. However the portion of the Order specified in the ordering clauses takes effect upon May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Tamara Preiss, Deputy Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand and Report and Order in CC Docket Nos. 96–98, 99–68, adopted April 18, 2001, and released on April 27, 2001. The full text of this document is available for public inspection Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, DC 20554. The complete text of the order may be purchased from the Commission's duplicating contractor, ITS, Inc., at 1231 20th Street N.W., Washington, DC 20036 (202–857–3800).

Synopsis of Order on Remand and Report and Order

1. After a remand by the U.S. Court of Appeals for the D.C. Circuit in *Bell Atlantic Telephone Cos.* v. *FCC,* 206 F.3d 1 (D.C. Cir. 2000), in this final rule the Commission reconsiders the rationales underlying its regulatory treatment of telecommunications traffic delivered to ISPs to determine whether ISP-bound traffic is subject to statutory reciprocal compensation requirements. A more comprehensive review of the statute reveals that Congress intended to exempt certain enumerated categories of service from the universe of ''telecommunications'' subject to the reciprocal compensation requirements of section 251(b)(5), 47 U.S.C. 251(b)(5). The statute does not mandate reciprocal compensation for ''exchange access, information access, and exchange services for such access'' when the service is provided by local exchange carriers (LECs) to interexchange carriers (IXCs) or information service providers. The Commission finds that Congress specifically exempted the services enumerated under section 251(g), 47 U.S.C. 251(g), from the newly-imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission. Because the Commission interprets paragraph (g) as a carve-out provision, the focus of the inquiry is on the universe of traffic that falls within paragraph (g) and *not* the universe of traffic that falls within paragraph (b)(5).

2. The Commission specifically finds that ISP-bound traffic falls within at least one of the three enumerated categories in section 251(g). Regardless of whether this traffic falls under the category of ''exchange access,'' an issue pending before the U.S. Court of Appeals for the D.C. Circuit in a separate proceeding, the Commission concludes that this traffic, at a minimum, falls under the rubric of ''information access,'' a legacy term imported into section 251(g) of the 1996 Act from the *Modified Final Judgment (MFJ),* but not expressly defined in the Communications Act. *See United States* v. *AT&T,* 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983). The

ISP-bound traffic at issue here falls within that category because it is access traffic destined for an information service provider. Because the legacy term ''information access'' in section 251(g) encompasses ISP-bound traffic, this traffic is excepted from the scope of the ''telecommunications'' subject to reciprocal compensation under section 251(b)(5). For these reasons, the Commission finds that Congress, through section 251(g), expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic.

3. For services that qualify under section 251(g), compensation is based on rules, regulations, and policies that preceded the Telecommunications Act of 1996 (1996 Act), and not on section 251(b)(5) which was minted by the 1996 Act. At least until the Commission by regulation should determine otherwise, Congress preserved the pre-1996 Act regulatory treatment of all the interstate access services enumerated under section 251(g). Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of ''telecommunications'' subject to section 251(b)(5)—demonstrating that the term must be construed in light of other provisions in the statute. In this regard, the Commission again concludes that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms.

4. Accordingly, the Commission affirms, although for different reasons, the conclusion in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling* in CC Docket No. 96–98 and *Notice of Proposed Rulemaking (NPRM)* in CC Docket No. 99–68, 14 FCC Rcd 3689 (1999), *64 FR 14239 (March 24,1999) (Declaratory Ruling),* that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).

5. Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), the Commission finds that it has authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its *jurisdictional* authority to regulate the interstate access services that local exchange carriers (LECs) provide to connect callers with IXCs or information service providers in order to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception. The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component. Indeed, that court observed that the interstate and intrastate components cannot be reliably separated. Thus, ISP traffic is properly classified as interstate. Hence, it falls under the Commission's section 201 jurisdiction.

6. The Commission further concludes that section 251(i) provides additional support for the finding that Congress has granted the Commission the authority on a going-forward basis to establish a compensation regime for ISP-bound traffic.

7. Because the Commission determines that intercarrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under section 201, it is incumbent upon the Commission to establish an appropriate cost recovery mechanism for delivery of this traffic. Based upon the record before it, the Commission believes that the most efficient recovery mechanism for ISP-bound traffic is likely to be bill and keep, whereby each carrier recovers costs from its own end-users.

8. As the Commission recognizes in the accompanying *Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime,* CC Docket Nos. 01–92, 98–98, *Notice of Proposed Rulemaking,* FCC 01–132 (April 27, 2001), compensation regimes that require carrier-to-carrier payments are likely to distort the development of competitive markets by divorcing cost recovery from the ultimate consumer of services. In the *NPRM,* the Commission suggests that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus, carriers have every incentive to compete, not on the basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.

9. The Commission believes that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high volumes of traffic that are entirely one-directional. Indeed, the weight of the evidence in the current record indicates that precisely the types of market distortions identified above are taking place with respect to ISP traffic. For example, comments in the record indicate that competitive local exchange carriers (CLECs), on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic. Moreover, the traffic imbalances for some competitive carriers are in fact much greater, with several carriers terminating more than forty times more traffic than they originate. There is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers. In this case, however, the Commission believes that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a terminating carrier could serve an ISP free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.

10. Based upon the current record in this proceeding, however, bill and keep appears to be the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage. The Commission does not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and the Commission believes that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users. Because these questions are equally relevant to its evaluation of a bill and keep approach for other types of traffic, the Commission will consider them in the context of the *NPRM.* Moreover, the Commission believes that there are significant advantages to a global evaluation of the intercarrier compensation mechanisms applicable to different types of traffic to ensure a more systematic, symmetrical treatment of these issues.

11. Because the record in this proceeding indicates a need for immediate action with respect to ISP-bound traffic, however, in this final rule

the Commission implements an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding. Specifically, the Commission adopts a gradually declining cap on the amount that carriers may recover from other carriers for delivering ISP-bound traffic. The Commission also caps the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. In sum, the Commission's goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users. In this regard, the Commission emphasizes that the rate caps the Commission imposes are not intended to reflect the costs incurred by each carrier that delivers ISP traffic. Some carriers' costs may be higher; some are probably lower. Rather, the Commission concludes, based upon all of the evidence in this record, that these rates are appropriate limits on the amounts recovered from other carriers and provide a reasonable transition from rates that have (at least until recently) typically been much higher. Carriers whose costs exceed these rates are (and will continue to be) able to collect additional amounts from their ISP customers. As noted, and explained in more detail in the Order, the Commission believes that such end-user recovery likely is the most efficient mechanism.

12. Beginning on the effective date of the final rule, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. In addition to the rate caps, the Commission imposes a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement. This interim regime affects only the intercarrier *compensation* (i.e., the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under the Commission's part 51 rules, 47 CFR part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine the goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Nothing in the final rule prevents any carrier from serving or indeed expanding service to ISPs, so long as they recover the costs of additional minutes from their ISP customers.

13. Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps. Thus, if a state has ordered all LECs to exchange ISP-bound traffic on a bill and keep basis, or if a state has ordered bill and keep for ISP-bound traffic in a particular arbitration, those LECs subject to the state order would continue to exchange ISP-bound traffic on a bill and keep basis.

14. In order to limit disputes and costly measures to identify ISP-bound traffic, the Commission adopts a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in the final rule. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

15. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps the Commission adopts here, when the traffic imbalance is reversed. Because the Commission is concerned about the superior bargaining power of incumbent LECs, the Commission will not allow them to ''pick and choose'' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that the Commission adopts here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, the Commission does not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis. This limitation is necessary so that an incumbent is not required to deliver all section 251(b)(5) in a state on a bill and keep basis even though it continues to pay compensation for most ISP-bound traffic in that state. For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps the Commission adopts for ISP-bound traffic, the Commission orders them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This ''mirroring'' rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

16. Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to

interconnection agreements prior to the adoption date of this Order (April 18, 2001), where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served. In such a case, as of the effective date of the final rule, carriers must exchange ISP-bound traffic on a bill-and-keep basis during this interim period.

17. The interim compensation regime the Commission establishes here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date. Because the Commission now exercises its authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the **Federal Register**, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201. The Commission finds there is good cause under 5 U.S.C. 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for the exchange of ISP-bound traffic upon publication of this Order in the **Federal Register**, in order to prevent carriers from exercising opt in rights during the thirty days after **Federal Register** publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps the Commission has adopted during that window would seriously undermine the Commission's effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery. In any event, the Commission's rule implementing section 252(i) requires incumbent LECs to make available ''[i]ndividual interconnection, service, or network element arrangements'' to requesting telecommunications carriers only ''for a reasonable period of time.'' 47 CFR 51.809(c). The Commission concludes that any ''reasonable period of time'' for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

18. In summary, the interim regime the Commission adopts in this final rule ''provides relative certainly in the marketplace'' pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments. The interim regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a ''flash cut'' to bill and keep which might upset legitimate business expectations. The Commission believes that the analysis supplied in the Order amply responds to the court mandate that the Commission explains how its conclusions regarding ISP-bound traffic fit within the governing statute.

Paperwork Reduction Act

19. This order contains no new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA).

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Declaratory Ruling and NPRM. Declaratory Ruling,* 14 FCC Rcd at 3710–13. The Commission sought and received written comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order on Remand and Report and Order conforms to the RFA, as amended. *See* 5 U.S.C. 604. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, was amended by the ''Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA).

21. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to the Commission's rules, or statements made in preceding sections of this Order on Remand and Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

Need for, and Objectives of, This Order on Remand and Report and Order

22. In the *Declaratory Ruling,* the Commission found that it did not have an adequate record upon which to adopt a rule regarding intercarrier compensation for ISP-bound traffic, but the Commission indicated that adoption of a rule would serve the public interest. *Declaratory Ruling and NPRM,* 14 FCC Rcd at 3707. The Commission sought comment on two alternative proposals, and stated that the Commission might issue new rules or alter existing rules in light of the comments received. *Declaratory Ruling and NPRM,* 14 FCC Rcd at 3711. Prior to the release of a decision on such intercarrier compensation, the U.S. Court of Appeals for the District of Columbia Circuit vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the Commission. *See Bell Atlantic,* 206 F.3d 1.

23. This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from $.0015/mou to $.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

24. The Office of Advocacy, U.S. Small Business Administration (Office of Advocacy) submitted two filings in response to the IRFA. Office of Advocacy, U.S. Small Business Administration *ex parte,* May 27, 1999; Office of Advocacy, U.S. Small Business Administration *ex parte,* June 14, 1999. In these filings, the Office of Advocacy raises significant issues regarding the Commission's description, in the IRFA, of small entities to which the Commission's rules will apply, and the

discussion of significant alternatives considered and rejected. Specifically, the Office of Advocacy argues that the Commission has failed accurately to identify all small entities affected by the rulemaking by refusing to characterize small incumbent local exchange carriers (LECs), and failing to identify small ISPs, as small entities. Office of Advocacy, U.S. Small Business Administration *ex parte,* May 27, 1999, at 1–3; Office of Advocacy, U.S. Small Business Administration *ex parte,* June 14, 1999, at 2–3. The Commission notes that, in the IRFA, the Commission stated that the Commission excluded small incumbent LECs from the definitions of ''small entity'' and ''small business concern'' because such companies are either dominant in their field of operations or are not independently owned and operated. *Declaratory Ruling* and NPRM, 14 FCC Rcd at 3711. The Commission also stated, however, that the Commission would nonetheless, out of an abundance of caution, include small incumbent LECs in the IRFA, and did so. *Declaratory Ruling and NPRM,* 14 FCC Rcd at 3711. Small incumbent LECs and other relevant small entities are included in the Commission's present analysis as described.

25. The Office of Advocacy also states that Internet service providers (ISPs) are directly affected by the Commission's actions, and therefore should be included in its regulatory flexibility analysis. The Commission finds, however, that rates charged to ISPs are only indirectly affected by its actions. The Commission has, nonetheless, briefly discussed the effect on ISPs in the primary text of this Order.

26. Last, the Office of Advocacy also argues that the Commission has failed adequately to address significant alternatives that accomplish its stated objective and minimize any significant economic impact on small entities. Office of Advocacy, U.S. Small Business Administration *ex parte,* June 14, 1999, at 3. The Commission notes that, in the IRFA, it described the nature and effect of its proposed actions, and encouraged small entities to comment (including giving comment on possible alternatives). The Commission also specifically sought comment on the two alternative proposals for implementing intercarrier compensation—one that resolved intercarrier compensation pursuant to the negotiation and arbitration process set forth in section 252, and another that would have had the Commission adopt a set of federal rules to govern such intercarrier compensation. *Declaratory Ruling [IRFA],* 14 FCC Rcd at 3711 (para. 39); *see also Declaratory Ruling,* 14 FCC Rcd at 3707–08 (paras. 30–31). The Commission believes, therefore, that small entities had a sufficient opportunity to comment on alternative proposals.

27. NTCA also filed comments, not directly in response to the IRFA, urging the Commission to fulfill its obligation to consider small telephone companies. NTCA NPRM Comments at vi, 15. Some commenters also raised the issue of small entity concerns over increasing Internet traffic and the use of Extended Area Service (EAS) arrangements. *See, e.g.,* ICORE NPRM Comments at 1–7; IURC NPRM Comments at 7; Richmond Telephone Company NPRM Comments at 1–8. The Commission is especially sensitive to the needs of rural and small LECs that handle ISP-bound traffic, but the Commission finds that the costs that LECs incur in *originating* this traffic extends beyond the scope of the present proceeding and should not dictate the appropriate approach to compensation for *delivery* of ISP-bound traffic.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

28. The rules the Commission is adopting apply to local exchange carriers. To estimate the number of small entities that would be affected by this economic impact, the Commission first considers the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. 13 CFR 121.201.

29. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 2000) (Carrier Locator). According to data in the most recent report, there are 4,144 interstate carriers. Carrier Locator at Fig. 1. These carriers include, *inter alia,* incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

30. The Commission has included small incumbent local exchange carriers (LECs) in this present regulatory flexibility analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1–3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2–3. The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket, 96–98, *First Report and Order,* 11 FCC Rcd 15499, 16144–45 (1996). The Commission has therefore included small incumbent LECs in this regulatory flexibility analysis, although the Commission emphasizes that this regulatory flexibility analysis action has

no effect on the Commission's analyses and determinations in other, non-RFA contexts.

31. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) (1992 Census). This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

32. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. 1992 Census at Firm Size 1–123. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

33. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201, SIC Code 4813. According to the Commission's most recent TRS data, there are 1,348 incumbent LECs and 212 CAPs and competitive LECs. Carrier Locator at Fig. 1. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 1,348 incumbent LECs and fewer than 212 CAPs and competitive LECs that may be affected by the decisions and rule changes adopted in this proceeding.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. The rule the Commission is adopting imposes direct compliance requirements on interconnected incumbent and competitive LECs, including small LECs. In order to comply with this rule, these entities will be required to exchange their ISP-bound traffic subject to the rules the Commission is adopting.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. In the *Declaratory Ruling and NPRM* the Commission proposed various approaches to intercarrier compensation for ISP-bound traffic. *Declaratory Ruling,* 14 FCC Rcd at 3707–10. During the course of this proceeding the Commission has considered and rejected several alternatives. None of the significant alternatives considered would appear to succeed as much as the Commission's present rule in balancing its desire to minimize any significant economic impact on relevant small entities with its desire to deal with the undesirable incentives created under the current reciprocal compensation regime that governs the exchange of ISP-bound traffic in most instances. The Commission also finds that for small ILECs and CLECs the administrative burdens and transaction costs of intercarrier compensation will be minimized to the extent that LECs begin a transition toward recovery of costs from end-users, rather than other carriers.

36. Although a longer transition period was considered by the Commission, it was rejected because a three-year period was considered sufficient to accomplish the Commission's policy objectives with respect to all LECs. Differing compliance requirements for small LECs or exemption from all or part of this rule is inconsistent with the Commission's policy goal of addressing the market distortions attributable to the prevailing intercarrier compensation mechanism for ISP-bound traffic and beginning a smooth transition to bill-and-keep.

37. *Report to Congress:* The Commission will send a copy of this Order on Remand and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act of 1996. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order on Remand and Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See also* 5 U.S.C. 604(b). A copy of this Order on Remand and Report and Order and FRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 201–209, 251, 252, 332, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 251, 252, 332, and 403, and section 553 of Title 5, United States Code, 5 U.S.C. 553, that this Order on Remand and Report and Order and revisions to part 51 of the Commission's rules, 47 CFR part 51, ARE ADOPTED. This Order on Remand and Report and Order and the rule revisions adopted herein will be effective 30 days after publication in the **Federal Register** except that, for good cause shown, as set forth in paragraph 82 of this Order and as described in paragraph 17 of this **Federal Register**

document, the provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the **Federal Register**.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Order on Remand and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications, common carriers, Interconnection, Telecommunications, Internet service providers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 51 as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. The heading in part 51, subpart H, is revised to read as follows:

Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

3. Section 51.701(b) is revised to read as follows:

§ 51.701 Scope of transport and termination pricing rules.

* * * * *

(b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see* FCC 01–131, paragraphs 34, 36, 39, 42–43); or

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

* * * * *

4. Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are amended by removing the term ''local telecommunications traffic'' and adding in its place ''telecommunications traffic'' each place it appears.

[FR Doc. 01–12165 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–1082; MM Docket No. 97–86; RM–9025 & RM–9084]

Radio Broadcasting Services; Camdenton and Laurie, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Camdenton Community Broadcasters proposed the allotment of Channel 265A at Camdenton, Missouri, as the community's first local commercial FM service. *See* 62 FR 10010, March 5, 1997. In response to a counterproposal filed by Bott Communications, Inc., we shall allot Channel 265C3 at Laurie, Missouri, as a first local service, at coordinates 38–08–30 and 92–50–37. There is a site restriction 6 kilometers south of the community. No allotment will be made at Camdenton, Missouri. A filing window for Channel 265C3 at Laurie will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective June 11, 2001.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–86, adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Laurie, Channel 265C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12091 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1081; MM Docket No. 00–6; RM–9791; RM–9890]

Radio Broadcasting Services; McCook, Alliance, Imperial, NE, Limon, Parker, Aspen, Avon, Westcliffe, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of McCook Radio Group, LLC, allots Channel 271C1 to McCook, NE, as the community's fifth local FM service. At the request of The Meadowlark Group, Inc., the Commission substitutes Channel 276C for Channel 276C1 at Limon, CO, reallots Channel 276C to Parker, CO, and modifies the license of Station KAVD accordingly. To accommodate the allotment of Channel 276C to Parker, the Commission also substitutes: (1) Channel 276C3 for Channel 249C3 at Aspen, CO, and modifies the license of Station KSPN; (2) Channel 249C2 for Channel 276C2 at Avon, CO, and modifies the license of Station KZYR; (3) Channel 227A for vacant and unapplied for Channel 276A at Westcliffe, CO; (4) Channel 275CO for Channel 275C at Imperial, NE, and modifies the construction permit of Imperial Media Association. *See* 65 FR 4798, February 1, 2000. A filing window for Channel 271C1 at McCook, NE, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective June 12, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: Channel 271C1 can be allotted to McCook, Nebraska, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.6 kilometers (12.2 miles) west, at coordinates 40–12–00 NL; 100–51–25 WL, to avoid a short-spacing to Station KKQY, Channel 270C1, Hill City, Kansas, and the pending application of Station KRNY, Channel 272C1, Kearney, Nebraska. Channel 275C0 can be allotted to Imperial, Nebraska, at the site specified in Imperial Media's construction permit (BPH–19970924ML), at coordinates 40–45–31 NL; 101–52–32 WL. Channel 276C can be allotted to Parker with a site restriction of 63.4 kilometers (39.4 miles) east to accommodate Meadowlark's desired transmitter site, at coordinates 39–26–08 NL; 104–02–05 WL. Channel 249C2 can be allotted to Avon, Colorado, with a site restriction of 5.3 kilometers (3.3 miles) east, at coordinates 39–37–52 NL; 106–27–42 WL. Channel 276C3 can be allotted to Aspen, Colorado, at Station KSPN–FM's licensed transmitter site, at coordinates 39–13–33 NL; 106–50–00 WL. Channel 227A can be allotted to Westcliffe, Colorado, at the same coordinates as presently allotted Channel 276A, which are 38–04–28 NL; 105–32–13 WL.

This is a synopsis of the Commission's Report and Order, MM Docket No. 00–6, adopted April 25, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 249C3 and adding Channel 276C3 at Aspen, removing Channel 276C2 and adding Channel 249C2 at Avon, removing Channel 276C1 at Limon, removing Channel 276A and adding Channel 227A at Westcliffe and by adding Parker, Channel 276C.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 275C0 and removing Channel 275C at Imperial, adding Channel 271C1 at McCook.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12090 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1080; MM Docket No. 00–165; RM–9941]

Radio Broadcasting Services; Royston and Arcade, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Southern Broadcasting of Athens, Inc., the Commission reallots Channel 279C3 from Royston to Arcade, Georgia, as that community's first local aural transmission service, and modifies the license for Station WPUP(FM) accordingly. *See* 65 FR 56858, September 20, 2000. Coordinates used for Channel 279C3 at Arcade are 34–15–09 NL; 83–28–28 WL.

DATES: Effective June 11, 2001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–165, adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Arcade, Channel 279C3, and by removing Royston, Channel 279C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12088 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1094; MM Docket No. 00–194, RM–9972; MM Docket No. 00–196, RM–9974; MM Docket No. 00–197, RM–9975]

Radio Broadcasting Services; Paradise, MI; Lynchburg, TN; and Rincon, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants two proposals that allot new FM channels to Paradise, Michigan and Lynchburg, Tennessee. It also denies a petition for rule making to allot a new FM channel to Rincon, Texas. Filing windows for Channel 234A at Paradise, Michigan, and Channel 296A at Lynchburg, Tennessee will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 00–194; MM Docket No. 00–196; and MM Docket No. 00–197, adopted April 18, 2001, and released April 27, 2001. The

full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission, at the request of David C. Schaburg, allots Channel 234A at Paradise, Michigan, as the community's first local aural transmission service. *See* 65 FR 64924 (October 31, 2000). Channel 234A can be allotted at Paradise in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 234A at Paradise are 46–37–42 North Latitude and 85–02–18 West Longitude.

The Commission, at the request of Mash Media, allots Channel 296A at Lynchburg, Tennessee, as the community's first local aural transmission service. *See* 65 FR 64924 (October 31, 2000). Channel 296A can be allotted to Lynchburg in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 296A at Lynchburg are 35–16–54 North Latitude and 86–22–24 West Longitude.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Paradise, Channel 234A.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Lynchburg, Channel 296A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12087 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1102, MM Docket No. 00–216; RM–9995, 10066]

Radio Broadcasting Services; McKinleyville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition filed by Four Rivers Broadcasting, Inc., requesting the allotment of Channel 236C3 at McKinleyville, California, as the community's first local aural transmission service. See 65 FR 67691 (November 13, 2000). It also allots chanel *277C3 at McKinleyville in response to a counterproposal filed by Christian Country Network. Inc, requesting the allotment of a channel at McKinleyville and reservation for noncommercial use. Channel 236C3 can be allotted at McKinleyville, California consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules without a site restriction at coordinates 40–56–42 NL and 124–05–54 WL. Channel *277C3 can be allotted at McKinleyville, California consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules at a site 18.1 kilometers (11.2 miles) north at coordinates 41–06–11 NL and 124–09–00 WL.

DATES: Effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–216 adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

PART 73—[AMENDED]

2. Section 73.202(b) the FM Table of Allotments under California is amended by adding McKinleyville, Channels 236C3 and *277C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12086 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and atmospheric Administration

50 CFR Part 679

[Docket No. 010111009–1009–01; I.D. 122600A]

RIN 0648–AO72

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule to Revise Certain Provisions of the American Fisheries Act; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects the emergency interim rule that revised certain provisions of the American Fisheries Act for implementation for the 2001 fishing year, which was published January 22, 2001.

DATES: Effective January 18, 2001, through July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Background

An emergency interim rule was published in the **Federal Register** on January 22, 2001 (66 FR 7327), to revise certain provisions of the American Fisheries Act for implementation for the 2001 fishing year.

Correction

In the emergency interim rule, § 679.7(k) was inadvertently omitted. Correct this omission at page 7330, third column, by adding instruction 2a to read as follows:

2a. Section 679.7(k) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) *Prohibitions specific to the AFA* (applicable through July 17, 2001). It is unlawful for any person to do any of the following:

(1) *Catcher/processors*—(i) *Permit requirement*. Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA*. Use an unrestricted AFA catcher/processor to fish for any species of fish in the GOA.

(iii) *Processing BSAI crab*. Use an unrestricted AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish*. Use an unrestricted AFA catcher/processor to process any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure*. Use an unrestricted AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Unrestricted AFA catcher/processors*. Use an unrestricted AFA catcher processor to process any groundfish that was not weighed on a NMFS-certified scale.

(B) *Restricted AFA catcher processors*. Use a restricted AFA catcher processor to process any pollock harvested in the BSAI directed pollock fishery that was not weighed on a NMFS-certified scale.

(2) *Motherships*—(i) *Permit requirement*. Use a mothership to process pollock harvested by an AFA catcher vessel with an inshore or mothership sector endorsement in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the vessel.

(ii) *Cooperative processing endorsement*. Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under § 679.60 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing requirement*. Use an AFA mothership to process groundfish harvested in the BSAI or GOA that was not weighed on a NMFS-certified scale.

(3) *Shoreside processors and stationary floating processors*—(i) *Permit requirement*. Use a shoreside processor or stationary floating processor to process groundfish harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or vessel.

(ii) *Cooperative processing endorsement*. Use a shoreside processor or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under § 679.61 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors*. Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one year.

(iv) *Single geographic location requirement*. Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors*. The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors*. A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing requirement*. Use an AFA inshore processor to process groundfish harvested in the BSAI or GOA that was not weighed on a scale certified by the State of Alaska.

(4) *Catcher vessels*. (i) Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv),§ 679.21(d)(8) or § 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(5) *AFA inshore fishery cooperatives*—(i) *Quota overages*. Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit to harvest non-CDQ pollock in excess of the cooperative's annual allocation of pollock specified under § 679.61.

(ii) *Liability*. An inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC. The owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. The owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violation of these regulations committed by a member vessel of a cooperative.

(6) *Crab processing limits*. It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.64. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severably liable for any overages of the AFA inshore or mothership entity's crab processing sideboard cap.

Dated: May 9, 2001.

William T. Hogarth,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–12217 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 94
Tuesday, May 15, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV01–920–1 PR]

Kiwifruit Grown in California; Removal of Certain Inspection and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the removal of certain inspection and pack requirements prescribed under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would remove the requirement that fruit must be reinspected if it has not been shipped by specified dates, and would also remove the minimum net weight requirements for kiwifruit tray packs. These changes are expected to reduce handler packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace.

DATES: Comments must be received by June 14, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

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

This proposal invites comments on the removal of certain inspection and pack requirements prescribed under the order. The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would remove the requirement that fruit must be reinspected if it has not been shipped by specified dates, and would also remove the minimum net weight requirements for kiwifruit tray packs. These changes are expected to reduce handler packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace.

Removal of Reinspection Requirement

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit shipped after the certification period lapsed was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provided. The Committee also believed it was no

longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. Suspension of the reinspection requirement enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. However, because the harvest started later than normal and more fruit was in-line inspected and shipped directly to buyers, less fruit was repacked and available for evaluation than anticipated.

Therefore, at its February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 of the order for one more season. Section 920.155 was suspended for the 1999–2000 season by a final rule published on July 29, 1999 (64 FR 41010).

During the 1999–2000 season a severe frost reduced the crop size from the estimated 9 million tray equivalents to 6 million tray equivalents. A tray equivalent is equal to approximately 7 pounds of fruit. This significant crop reduction and the excellent quality of the fruit resulted in limited quantities of fruit remaining in cold storage for repacking and evaluation. The Committee wanted to fully evaluate the suspension of the reinspection requirement during a normal season. Therefore the Committee, at its February 24, 2000, meeting, unanimously recommended suspending § 920.155 for another season, the 2000–2001 season. Section 920.155 was suspended for the 2000–2001 season by a final rule published on June 14, 2000 (65 FR 37265).

The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have indeed helped handlers reduce packing costs and to compete more effectively in the marketplace. Therefore, at its February 28, 2001, meeting the Committee recommended removing this inspection requirement for the 2001–2002 and future seasons. As previously experienced, this change is expected to result in reduced handler packing costs, increased growers returns, and enable handlers to compete more effectively in the marketplace.

Removal of Minimum Net Weight Requirements for Trays

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements.

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements, although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was tray packed and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule which was published September 3, 1998 (63 FR 14861) and finalized July 29, 1999 (64 FR 41019).

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the market. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of the industry was that the absence of tray weights had no impact during the 1998–1999 season due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season to evaluate the suspended requirements during a season when the fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010).

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season, the Committee recommended suspending the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee once again unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. The suspension was implemented through July 31, 2001, by a final rule issued June 14, 2000 (65 FR 37265). The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. Therefore, at its February 28, 2001, meeting, the Committee recommended removing this pack requirement for the 2001–2002 and future seasons. As previously experienced, this change is expected to result in reduced handler packing costs, increased growers returns, and enable handlers to compete more effectively in the marketplace, as previously experienced.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of

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

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 350 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. All of the handlers have annual receipts of less than $5,000,000, excluding receipts from other sources. Three hundred forty-five producers have annual sales of less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This rule would remove § 920.155 which requires that fruit be reinspected if it has not been shipped by specified dates, and would remove paragraph (a)(4)(iii) of § 920.302 which specifies minimum net weight requirements for kiwifruit tray packs. These changes are expected to reduce handler-packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in §§ 920.52 and 920.55 of the order.

Removal of Reinspection Requirement

Removing the requirement that kiwifruit must be reinspected if has not been shipped by a certain date would have a minimal impact on the quality of fruit shipped. Prior to its suspension for 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit shipped after the certification period lapsed was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provided. Total average costs for reinspection was estimated to be $50,000 a year. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. Quality control efforts in place within the industry combined with improved storage due to research and technological advances has ensured that quality fruit reaches the market.

Suspension of the reinspection requirement enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. However, because the harvest started later than normal and more fruit was in-line inspected and shipped directly to buyers, less fruit was repacked and available for evaluation than anticipated.

Therefore, at its February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 of the order for one more season. Section 920.155 was suspended for the 1999–2000 season by a final rule published on July 29, 1999 (64 FR 41010).

During the 1999–2000 season a severe frost reduced the crop size from the estimated 9 million tray equivalents to 6 million tray equivalents. A tray equivalent is equal to approximately 7 pounds of fruit. This significant crop reduction and the excellent quality of the fruit resulted in less fruit remaining in cold storage for repacking and evaluation.

The Committee believed that the industry realized benefits from the suspension of the reinspection requirement, and recommended evaluating the results of the suspended reinspection requirements during a normal season. Thus the Committee, at its February 24, 2000, meeting, unanimously recommended suspending § 920.155 for the 2000–2001 season. This suspension was implemented by a final rule published on June 14, 2000 (65 FR 37265). The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. The kiwifruit industry estimated that removal of the reinspection requirement has resulted in cost savings to the industry of approximately $50,000 a year.

Therefore, the Committee, at its February 28, 2001, meeting, unanimously recommended removing § 920.155 for the 2001–2002 and future seasons.

Removal of Minimum Net Weight Requirements for Trays

Removing the minimum tray weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays would have a minimal impact on the appearance of tray packs. Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season, the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was tray packed and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

Therefore, at its meeting on July 8, 1998, the Committee unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the marketplace. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of the industry that season was that the absence of tray weights had no negative impact during the 1998–1999 season due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting, unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season to evaluate the suspended requirements during a season when the fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010).

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season, the Committee voted to suspend the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee once again unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. This suspension was implemented by a final rule issued June 14, 2000 (65 FR 37265) and is in effect until July 31, 2001.

The 2000–2001 season was normal and enabled the Committee to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. The Committee and the Federal-State Inspection Service also have concluded that removing the minimum tray weight requirements would not result in a reduction in inspection costs as the inspection process is essentially the same. The Committee, at its February 28, 2001, meeting, unanimously recommended removing paragraph (a)(4)(iii) of § 920.302 for the 2001–2002 and all future seasons. The Committee also noted that the minimum size requirement should be maintained on all kiwifruit regardless of pack style.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interests of handlers, growers, buyers, and consumers. The impact of these changes is expected to be beneficial to all handlers and growers regardless of size.

The Committee discussed alternatives to this change, including continuing the temporary suspensions for another year. The industry believes that it has had adequate time to evaluate these changes. The suspensions helped handlers reduce packing costs and compete more effectively in the marketplace without an adverse affect on quality or appearance of the fruit. Therefore, the Committee recommended removal of §§ 920.155 and 920.302(a)(4)(iii) for the 2001–2002 and future seasons.

This proposed rule would relax inspection and pack requirements under the kiwifruit marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 28, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The majority of the industry are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place by August 1, 2001, as the current suspensions expire on July 31, 2001, and handlers need to make operational decisions in time for the 2001–2002 season. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.155 [Removed]

2. In part 920, § 920.155 is removed in its entirety.

§ 920.302 [Amended]

3. In § 920.302, paragraph (a)(4)(iii) is removed and paragraphs (a)(4)(iv), (v), and (vi) are redesignated as paragraphs (a)(4) (iii), (iv), and (v), respectively.

Dated: May 9, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–12140 Filed 5–14–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–4 PR]

Tart Cherries Grown in the States of Michigan, et al.; Temporary Suspension of a Provision Regarding a Continuance Referendum Under the Tart Cherry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule requests comments on the temporary suspension of an order provision which requires a continuance referendum to be conducted on the marketing order for tart cherries during March 2002. The proposed suspension would enable the U.S. Department of Agriculture (USDA or Department) to postpone conducting the continuance referendum until the completion of amendatory order proceedings. The Cherry Industry Administrative Board (Board) recommended a delay in holding the continuance referendum to allow the industry to evaluate the results of any approved amendments. A continuance

referendum in March of 2003 is planned.

DATES: Comments must be received by July 16, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at the following website: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland, 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 930 (7 CFR part 930) (order) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Washington, and Wisconsin. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

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

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

This action would temporarily suspend the provision in § 930.83(d) of the order which specifies when a continuance referendum should be conducted to determine if producers and processors favor continuance of the tart cherry marketing order. This action was unanimously recommended by the Committee at its January 25, 2001, meeting.

Section 930.83(d) of the order currently provides that the Secretary shall conduct a referendum within the month of March every six years after the order became effective to ascertain whether continuance of the order is favored by tart cherry producers and processors. The order became effective in September 1996. A continuance referendum is, therefore, scheduled to be conducted in March 2002.

Section 930.83(b) authorizes the Secretary to terminate or suspend the operation of any or all provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

In 1998, the Board recommended several proposed amendments to the tart cherry marketing order to improve the administration of the order and more accurately reflect how the program is operated. It also requested that public hearings be held on the proposed amendments. The amendatory process can be lengthy depending on the complexity of the amendments and the level of support for the amendments.

Under the applicable rules of practice (7 CFR part 900), the amendment process consists of several steps. The first step is the public hearing at which evidence (pro and con) is presented on the recommended amendments. After the public hearings are completed, a Recommended Decision, based on the evidence presented, is issued by the Department, with a request for written comments. Next, the Department considers the evidence of record including any exceptions to the Recommended Decision and then issues a Secretary's Decision and, if warranted, a Referendum Order. A Referendum Order would be issued if the Secretary determines that the amendments to the order would tend to effectuate the declared policy of the Act.

Initially, the Board intended to proceed with all of its proposed amendments in a single amendatory proceeding. However, after discussion with the Department, the Board agreed to split its proposed amendments to the order into two proceedings. The less complex amendments were handled first followed by the more complex amendments. An amendment referendum for the first series of amendments was held in January 2001. The formal rulemaking process for the second series of amendments, has begun, and is expected to be completed in the spring of 2002.

The Board recommended that the provision requiring the March 2002 continuance referendum be temporarily suspended to allow the Department to complete the amendatory proceedings. The temporary suspension would allow the Department to postpone the next continuance referendum for the tart cherry marketing order until March 2003.

Delaying the continuance referendum would allow for the completion of the amendatory proceedings and an evaluation by the industry an any approved amendments at least a year before producers and processors are asked to vote on continuing the order. A later continuance referendum should be a better indicator of the support for the order.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of

regulatory options and economic impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

This proposed rule would temporarily suspend the provision in § 930.83(d) of the order which specifies the month in which a continuance referendum should be conducted to determine if producers and processors favor the continuance of the tart cherry marketing order. Pursuant to this, the next continuance referendum is scheduled for March 2002. Section 930.83(b) authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

One alternative to this action would be to continue the status quo. However, without a postponement of the continuance referendum, the Department would have to conduct two referenda closely together, one for the second series of amendments and one for a continuance referendum. This could be confusing to growers and processors. Further, growers and processors would not have had time to determine how any amendments that are adopted could affect order operations and evaluate the results. A temporary delay in holding the continuance referendum until March 2003 would allow the amendments to be evaluated by growers and processors. Thus, the vote on continuance would be a more reliable determiner of industry support for the order.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177. This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Board's meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 930.83 [Amended]

2. In paragraph (d), the sentence ''The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and processors.'' is suspended effective March 1 through March 31, 2002.

Dated: May 9, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–12139 Filed 5–14–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–383–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modifications of route segregation between the low voltage wire bundles of the fuel quantity indicating system and the high voltage wire bundles of the ground power control unit. This action is necessary to prevent injection of 115 volt alternating current (VAC) into 28 volt direct current (VDC) wire bundles, which could result in high voltage conditions within the fuel tank and the potential for damage to equipment, electrical arcing, and fuel vapor ignition on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–383–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232.

Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–383–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 the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–383–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–383–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, in response to industry concerns, a review of the routing of wires that terminate/enter the fuel tank was performed on production aircraft. The review identified an unsafe condition in a 700-millimeter span of wiring at the back of shelf 92VU in the forward avionics compartment. Along that 700-millimeter span there is no permanent segregation between the electrical wire bundle connected to the fuel quantity indicating system (FQIS) and the bundle connected to the ground power control unit (GPCU). In the event that both bundles had wires damaged down to the core, and an electrical path, such as fluid or metallic contamination, occurred between the two wire bundles, conditions would exist that could result in the injection of 115 volts, alternating current (VAC), from the GPCU wires into the 28 volts, direct current (VDC), FQIS wires down to the fuel tanks. Such a high voltage injection into low voltage wiring could result in the potential for damage to equipment, electrical arcing, and fuel vapor ignition on the ground. This result could not occur in flight because the GPCU is powered only on the ground.

Explanation of Relevant Service Information

Airbus has issued Revision 02 of Service Bulletin A320–92–1007, dated August 4, 2000, which describes procedures for installing an additional protective conduit for each wiring route and a dual branch tubular ramp to ensure physical separation of the wiring routes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–407–150(B), dated September 20, 2000, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 291 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 to 42 work hours per airplane to accomplish the proposed modifications, depending on the wiring configuration of the airplane, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,300 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $797,340 and $1,111,620 or between $2,740 and $3,820 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2000–NM–383–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, except those on which Airbus Industrie Modification 28289 has been installed.

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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent injection of 115 volt alternating current (VAC) into 28 volt direct current (VDC) wire bundles, which could result in high voltage conditions within the fuel tank and the potential for damage to equipment, electrical arcing, and fuel vapor ignition on the ground, accomplish the following:

Modification

(a) Within 4 years after the effective date of this AD, install additional protective conduits and new supports to ensure physical route segregation between the low voltage wire bundles of the fuel quantity indicating system (FQIS) and the high voltage wire bundles of the ground power control unit (GPCU), in accordance with Airbus Service Bulletin A320–92–1007, Revision 02, dated August 4, 2000.

Note 2: Modifications accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–92–1007, dated January 12, 2000, or Airbus Service Bulletin A320–92–1007, Revision 01, dated June 29, 2000, are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send them to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–407–150(B), dated September 20, 2000.

Issued in Renton, Washington, on May 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12177 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–47–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717 series airplanes. This proposal would require repetitive inspections of the rod ends of the spoiler hold-down actuators for breakage along the intersection of the thread runout and the outer spherical surface of the lug; and replacement of any broken rod end of the spoiler hold-down actuators with a new rod end. This proposal also would require replacement of the rod ends of the spoiler hold-down actuators with new rod ends, and reidentification of the spoiler hold-down actuators, which would constitute terminating action for the repetitive inspections. This action is necessary to prevent failure of the rod ends of the spoiler hold-down actuators due to fatigue, which could result in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–47–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 the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–47–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of failures of the attach lug rod end on the spoiler hold-down actuators on McDonnell Douglas Model 717 series airplanes. These failures initiated along a region at the intersection of the thread runout and the outer spherical surface of the lug. Investigation revealed that such failures were caused by fatigue rupture with multiple failure origins. Failure of the rod ends of the spoiler hold-down actuators due to fatigue, if not corrected, could result in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–27A0010, dated August 15, 2000. This service bulletin describes procedures for repetitive general visual inspections of the rod ends of the hold-down actuators of the inboard and outboard spoilers for breakage along the intersection of the thread runout and the outer spherical surface of the lug; and replacement of any broken rod end of the spoiler hold-down actuators with a new rod end.

The FAA also has reviewed and approved Boeing Service Bulletin 717–27–0013, dated January 30, 2001, and Revision 01, dated February 28, 2001. The service bulletin describes procedures for replacement of the rod ends of the spoiler hold-down actuators with new rod ends, and reidentification of the spoiler hold-down actuators, which would eliminate the need for the repetitive inspections described above. The effectivity listing of Revision 01 of the service bulletin was revised from the original version of the service bulletin to include additional airplanes that are subject to the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Differences Between Service Bulletin and the Proposed AD

Operators should note that, although the effectivity listing of Boeing Service Bulletin 717–27A0010 affects airplanes having manufacturer's fuselage numbers 5002 through 5082 inclusive, this proposed AD does not affect McDonnell Douglas Model 717 series airplanes, manufacturer's fuselage numbers 5002, 5003, 5037 and subsequent. Those airplanes had improved rod ends installed during production that address the identified unsafe condition of this proposed AD. Therefore, those airplanes are not subject to the requirements of this proposed AD.

Cost Impact

There are approximately 33 Model 717 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,380, or $60 per airplane, per inspection cycle.

It would take approximately 14 work hours per airplane to accomplish the proposed replacement and reidentification, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the replacement and reidentification proposed by this AD on U.S. operators is estimated to be $19,320, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up,

planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–47–AD.

Applicability: Model 717 series airplanes, manufacturer's fuselage numbers 5004 through 5036 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rod ends of the spoiler hold-down actuators due to fatigue, which could result in loss of the back-up protection of the spoiler float hold-down and unavailability of monitoring for an uncommanded spoiler movement, accomplish the following:

General Visual Inspection

(a) Within 450 flight hours after the effective date of this AD, do a general visual inspection of the rod ends of the spoiler hold-down actuators of the inboard and outboard spoilers for breakage along the intersection of the thread runout and the outer spherical surface of the lug, per Boeing Alert Service Bulletin 717–27A0010, dated August 15, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Condition 1 (No Breakage Present)

(1) If no breakage is present, repeat the general visual inspection every 450 flight hours.

Condition 2 (Breakage Present)

(2) If any breakage is present, before further flight, replace the broken rod end of the spoiler hold-down actuator with a new rod end, per Boeing Alert Service Bulletin 717–27A0010, dated August 15, 2000; or Boeing Service Bulletin 717–27–0013, dated January 30, 2001, or Revision 01, dated February 28, 2001. As of the effective date of this AD, the replacement shall be done per Boeing Service Bulletin 717–27–0013, Revision 01, dated February 28, 2001. For rod ends that have been replaced per Boeing Alert Service Bulletin 717–27A0010, dated August 15, 2000, repeat the general visual inspection thereafter every 450 flight hours. Accomplishment of this replacement per Boeing Service Bulletin 717–27–0013 constitutes terminating action for the requirements of this AD for that rod end.

Terminating Action

(b) Within 15 months or 3,600 flight hours after the effective date of this AD, whichever occurs first, replace the rod ends of the spoiler hold-down actuators with new rod ends, and reidentify the spoiler hold-down actuators, per Boeing Service Bulletin 717–27–0013, dated January 30, 2001, or Revision 01, dated February 28, 2001. Accomplishment of this replacement and reidentification constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

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

Issued in Renton, Washington, on May 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12176 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–405–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require an inspection to determine the serial numbers of geared rotary actuators (GRA) for the leading edge slats, and replacement of certain actuators with new or reworked actuators. This action is necessary to prevent a fractured spring washer in a GRA, which could lead to a disconnect in the GRA, and result in a slat skew condition and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–405–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–405–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 the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–405–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–405–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that certain geared rotary actuators (GRA) for the leading edge slats on certain Boeing Model 757 series airplanes have been assembled with discrepant spring washers. The discrepant spring washers were not adequately processed during the phase of manufacture in which cadmium plating is applied. A fractured spring washer could lead to a disconnect between the input shaft or input plate and the output plate or splined gearshaft, which could result in a skew condition for the leading edge slat if one of the two actuators on each slat continues to drive the slat. The serial numbers of all affected GRAs are known.

Certain airplanes have had an enhanced slat skew or loss detection system installed either during production or according to Boeing Service Bulletin 757–27–0126, dated May 11, 2000. For these airplanes, a slat skew condition is not an airworthiness concern.

However, for airplanes without an enhanced slat skew or loss detection system, a slat skew condition, if not detected by the flight crew, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 757–27A0133 (for Model 757–200, 757–200CB, and 757–200PF series airplanes) and 757–27A0134 (for Model 757–300 series airplanes), both dated October 11, 2000. Those service bulletins describe procedures for a one-time inspection to determine the serial numbers of GRAs for the leading edge slats. If GRAs with certain serial numbers are installed, the service bulletin describes procedures for replacing affected GRAs with new or reworked parts. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

The Boeing service bulletins refer to Hamilton Sundstrand Service Bulletins 5006397/755299–27–21 and 5006398/755300–27–21, both dated January 24, 2000, as sources for the identification of affected part numbers and serial numbers, as well as instructions for reworking affected GRAs.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable Boeing service bulletin described previously.

Explanation of Applicability

While only certain Boeing Model 757 series airplanes had the GRAs with the discrepant spring washers installed in production, it is possible that the affected GRAs have been installed as spares on other Boeing Model 757 series airplanes. Therefore, the FAA finds that the unsafe condition addressed by this proposed AD may occur on any Boeing Model 757 series airplane manufactured on or prior to the effective date of this AD. However, paragraph (d) of this AD prohibits installation of the affected parts after the effective date of this AD; thus, airplanes with a date of manufacture after the effective date of this AD would not be subject to this proposed AD.

Cost Impact

There are approximately 950 airplanes of the affected design in the worldwide fleet. The FAA estimates that 606 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $727,200, or $1,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the replacement of all GRAs on an airplane, it would take approximately 30 work hours per airplane (1.5 work hours per actuator), at an average labor rate of $60 per work hour. Required parts may be provided by the parts manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed replacement is estimated to be up to $1,800 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–405–AD.

Applicability: Model 757 series airplanes with a date of manufacture that is on or before the effective date of this AD, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a fractured spring washer in a geared rotary actuator (GRA) for the leading edge slats, which could lead to a disconnect in the GRA, and result in a slat skew condition and consequent reduced controllability of the airplane, accomplish the following:

Inspection To Determine Serial Numbers

(a) At the applicable compliance time specified in paragraph (a)(1) or (a)(2) of this AD, inspect the 20 geared rotary actuators (GRA) for the leading edge slats to determine the part number series and serial number for each GRA, according to Boeing Alert Service Bulletin 757–27A0133 (for Model 757–200, 757–200CB, and 757–200PF series airplanes), or 757–27A0134 (for Model 757–300 series airplanes), both dated October 11, 2000; as applicable.

(1) For Boeing 757–200 series airplanes with line numbers (L/N) 1 through 803, on which an enhanced slat skew or loss detection system has NOT been installed according to Boeing Service Bulletin 757–27–0126, dated May 11, 2000, or Boeing Production Revision Record 54755: Do the inspection within 18 months after the effective date of this AD.

(2) For airplanes other than those identified in paragraph (a)(1) of this AD: Do the inspection within 36 months after the effective date of this AD.

If No Subject GRA Is Installed—No Further Action

(b) If no GRA has a part number series and serial number listed under Section 1.A. of Hamilton Sundstrand Service Bulletins 5006397/755299–27–21 or 5006398/755300–27–21, both dated January 24, 2000: No further action is required by this AD.

If Any Subject GRAs Are Installed—Corrective Actions

(c) For any GRA with a part number series and serial number listed under Section 1.A. of Hamilton Sundstrand Service Bulletins 5006397/755299–27–21 or 5006398/755300–27–21, both dated January 24, 2000: At the applicable compliance time specified in paragraph (c)(1) or (c)(2) of this AD, replace the subject GRA with a new or reworked GRA, according to Boeing Alert Service Bulletin 757–27A0133 (for Model 757–200, 757–200CB, and 757–200PF series airplanes), or 757–27A0134 (for Model 757–300 series airplanes), both dated October 11, 2000; as applicable.

(1) For Boeing 757–200 series airplanes with line numbers (L/N) 1 through 803, on which an enhanced slat skew or loss detection system has NOT been installed according to Boeing Service Bulletin 757–27–0126, dated May 11, 2000, or Boeing Production Revision Record 54755: Replace any subject GRA within 18 months after the effective date of this AD.

(2) For airplanes other than those identified in paragraph (c)(1) of this AD: Replace any subject GRA within 36 months after the effective date of this AD.

Spares

(d) After the effective date of this AD, no one may install a GRA that has a part number series and serial number listed under Section 1.A. of Hamilton Sundstrand Service Bulletins 5006397/755299–27–21 or 5006398/755300–27–21, both dated January 24, 2000, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on May 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12174 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 010416096–1096–01]

RIN 0648–AP22

Revisions to Anchoring Prohibitions in the Flower Garden Banks National Marine Sanctuary

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to amend the regulations governing the anchoring and mooring of vessels in the Flower Garden Banks National Marine Sanctuary (FGBNMS or Sanctuary). NOAA is proposing this change to conform the regulations to anchoring prohibitions adopted by the International Maritime Organization (IMO), at its December 6, 2000 meeting. NOAA is proposing to prohibit all anchoring and mooring in the Sanctuary with the exception that vessels 100 feet (30.48 meters) and under in length would be permitted to moor at sanctuary mooring buoys. The intent of this rule is to prevent further injuries to corals in the Sanctuary from anchoring impacts.

DATES: The agency must receive comments by June 14, 2001.

ADDRESSES: Comments concerning the proposed regulatory changes should be sent to G.P. Schmahl, Manager, Flower Garden Banks National Marine Sanctuary, 216 W. 26th Street, Suite 104, Bryan, Texas, 77803.

FOR FURTHER INFORMATION CONTACT: G.P. Schmahl (979) 779–2705, or Lisa Symons (301) 713–3141, ext. 108.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanctuary consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 nmi2. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi2. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi2. The three areas encompass a total of 42.34 nmi2 (145.09 square kilometers). The area is unique among the world's coral reefs. The area contains the northernmost coral reefs on the North American continental shelf and supports the most highly developed offshore hard-bank communities in the region. It is also home to organisms unknown on the world's other continental shelves. These organisms are generally associated with a hypersaline, anoxic brine seep having a chemosynthetic energy base analogous to that found at deep-sea hydrothermal vents. The reefs in Flower Garden Banks crest at approximately 15 meters below the water surface and extend downward to 46 meters depth, where the hermatypic corals are replaced by reefal communities dominated by coralline algae and sponges. This deeper ''algal terrace'' covers most surfaces down to a depth of 90 meters. The area has at least 20 species of hermatypic (reef building) corals, 80 species of algae, 196 known macro-invertebrate species, and more than 200 fish species. The reef-building corals and coralline algae construct and maintain the substratum and, through a multituide of relationships, largely control the structure of benthic communities occupying the banks. As a primary building-block for the entire ecosystem of the banks, the coral and algae are by far the most important organisms in the Flower Garden Banks ecosystem.

Observations by Sanctuary staff, researchers and members of the diving public indicate that anchoring of large commercial ships, particularly internationally flagged vessels, has caused considerable damage to the corals and other resources of the Sanctuary despite existing domestic regulations prohibiting anchorage of vessels greater than 100 feet (30.48 meters). There is clear evidence of anchoring damage to Flower Garden Banks from large ships. Scars or tracks of pulverized coral have been documented by studies conducted by submersibles and divers. The largest scar from anchoring found to date extends for approximately 1.7 kilometers and resembles a continuous, ''roadcut-like'' gouge into the bank. Another crater-like scar measures approximately 50 meters in diameter. Chain scars from the swinging of ships on their anchor chains are evident on many corals. There are hundreds of coral colonies abraded, fractured or toppled, apparently by the dragging of anchors or anchor cables and chains. Loose coral pieces act as agents of further injury to the living coral, particularly during heavy seas and storms as the pieces are repeatedly driven into and around the living coral. Coral such as that in Flower Garden Banks takes thousands of years to build. The regeneration of the reef from anchor damage may never occur. Even if optimal conditions for regeneration occur, it would still take hundreds and perhaps thousands of years for the reef to return to its pre-damage condition. Implementation of the proposed regulation and the restrictions on anchoring adopted by the IMO will prevent further injury to the coral and reef community.

Safety considerations also support establishment of this measure. The area is transited by commercial ships, many of which are en route to and from the U.S. ports in Texas and Louisiana. The safety of a ship can depend on the ability of its anchor to hold. The character of the bottom is of prime importance in determining whether an anchor will hold. Coral provides an unstable anchoring bottom. The scars and damage to the coral in this area are evidence that when deployed in coral anchors tend to drag along the bottom rather than hold in the coral. Additionally, there are a number of platforms and pipelines in this area it is very important from a safety perspective for ships to anchor only in areas where the bottom will provide good holding ground.

In July of 2000, the United States delegation to the IMO submitted a proposal to ban anchoring in FGBNMSs for vessels greater than 100 feet (30.48 meters). IMO, out of concern for impacts to corals, modified the proposal to prohibit all anchoring. Vessels 100 feet (30.48 meters) and under would be allowed to moor using Sanctuary mooring buoys. The new international measure would ensure that no-anchoring zones are marked on all charts internationally. This proposed rule would conform the Sanctuary regulations to the IMO action.

Recreational and commercial vessels 100 feet (30.48 meters) and under in

length use existing mooring buoys. There are currently 12 buoys on East and West Flower Garden Banks and 3 buoys on Stetson Banks. These will be supplemented by additional buoys if necessary.

The public has been involved in addressing the anchor damage issue and has sought greater protections within the Sanctuary. Prior to submission of the United States delegation's proposal to IMO, all relevant federal agencies were consulted and their comments were addressed. Public comment on this proposed rule is being solicited and will be considered prior to publication of any final rule.

II. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act, 16 U.S.C. 1434, provides authority for comprehensive and coordinated conservation and management of these areas in coordination with other resource management authorities.

National Environmental Policy Act

NOAA has concluded that this regulatory action would not have a significant effect, individually or cumulatively, on the human environment. Further, the action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.05b.2 of NOAA Administrative Order 216–6. Specifically, this action is not likely to result in significant impacts as defined in 40 CFR 1508.27.

Executive Order 12866: Regulatory Impact

This action has been determined to be not significant for the purpose of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule will not have a significant economic impact on a substantial number of small entities. Vessels 100 meters and under in length, which are those most likely to belong to small entities, would be allowed to moor using Sanctuary mooring buoys. The majority of users in this area are divers either on their own vessels or vessels operated by dive charter organizations in the area. The dive charter operations use the existing Sanctuary moorings and sine their vessels are less than 100 feet in length, they are not likely to be affected by this rule. Most of the vessels subject to this rule are foreign flagged vessels that are owned or chartered by large corporations. There is no reason to expect that this regulation will have a measurable impact on the small business community. Accordingly, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

This rule does not contain any collection of information requirements subject to the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 9, 2001.

Capt. Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons stated above, 50 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart L—Flower Garden Banks National Marine Sanctuary

2. Section 922.122 is amended by revising paragraphs (a)(2)(i) and (ii) to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) * * *

(2) * * *

(i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor on a Sanctuary mooring buoy.

* * * * *

[FR Doc. 01–12220 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105801–00]

RIN 1545–AX92

Capitalization of Interest and Carrying Charges Properly Allocated to Straddles; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that clarify the application of the straddle rules to a variety of financial instruments.

DATES: The public hearing originally scheduled for May 22, 2001, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, January 18, 2001, (66 FR 4746), announced that a public hearing was scheduled for Tuesday, May 22, 2001, at 10 a.m., in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 1092 and 263(g) of the Internal Revenue Code. The public comment period for these proposed regulations expired on May 1, 2001.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, May 8, 2001, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, May 22, 2001, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 01–12222 Filed 5–14–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53 and 301

[REG–246256–96]

RIN 1545–AY65

Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to charitable organizations to meet certain qualification requirements and taxes on excess benefit transactions.

DATES: The public hearing is being held on July 31, 2001, at 10 a.m. The IRS must receive outlines of topics to be discussed at the hearing by July 10, 2001.

ADDRESSES: The public hearing is being held in the auditorium, room 7218, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG–246256–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–246256–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submit electronic outlines of oral comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor of the Regulations Unit, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–246256–96) that was published in the **Federal Register** on Wednesday, January 10, 2001 (66 FR 2173).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by July 10, 2001.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

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

[FR Doc. 01–12221 Filed 5–14–01; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121928–98]

RIN 1545–AW99

Awards of Attorney's Fees and Other Costs Based Upon Qualified Offers; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking issuing temporary regulations relating to the circumstances in which a party, by reason of having made a qualified offer, will be entitled to an award of court costs and certain fees in a civil tax proceedings brought in a court of the United States (including the Tax Court).

DATES: The public hearing originally scheduled for May 23, 2001 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, January 4, 2001, (66 FR 749), announced that a public hearing was scheduled for Wednesday, May 23, 2001, at 10 a.m., in Room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed rulemaking under section 7430 of the Internal Revenue. The public comment period for these proposed regulations expired on Wednesday, April 4, 2001.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, May 9, 2001, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, May 23, 2001, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 01–12223 Filed 5–14–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 140, 141, 142, 143, 144, 145 and 146

[USCG 2001–9173]

RIN 2115–AF75

Floating Production, Storage, and Offloading Units in the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period.

SUMMARY: The Coast Guard is reopening the period for public comment on Floating Production, Storage, and Offloading Units in the Gulf of Mexico. Letters received to the docket requested more time to collect data and to develop comments.

DATES: Comments must be received on or before July 16, 2001.

ADDRESSES: You may submit your written comments and related material by any one of the following methods:

(1) By mail to the Docket Management Facility, [USCG–2001–9173], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management Facility at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the reopening of the comment period contact Lieutenant Commander Russell Proctor, Vessel Compliance Division (G–MOC–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington DC 20590, telephone 202–267–0499. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the request for comments period by submitting written data, views, or arguments.

To do so, please include your name and address, identify this docket [USCG 2001–9173], the specific issue for comment, and give the reason for each comment. You may submit your written comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please do not submit the same comment or material by more than one means. Do not submit comments that have already been made part of the docket. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period. All comments may be viewed at *http://dms.got.gov.*

Background

On March 27, 2001, the Coast Guard published a Notice of meeting; request for comments in the **Federal Register** (66 FR 16643). We requested comments on Floating Production, Storage, and Offloading Units in the Gulf of Mexico. A meeting was held on May 3, 2001, in Houston, Texas.

Purpose

Comments to the docket requested more time to collect data and to develop comments. Based on these requests and on the small number of comments received so far, the Coast Guard is reopening the comment period.

Dated: May 4, 2001.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–12114 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–1079; MM Docket No. 01–25; RM–10055]

Radio Broadcasting Services; Northome, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition for rulemaking filed by PharrNorth Radio requesting the allotment of Channel 291A at Northome, Minnesota. *See* 66 FR 10266, February 14, 2001. PharrNorth withdrew its interest in an allotment at Northome, Minnesota, in accordance with Section 1.420(j) of the Commission's Rules. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–25, adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12089 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1083; MM Docket No. 01–101; RM–10097]

Radio Broadcasting Services; St. Augustine and Neptune Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Clear Channel Broadcasting Licenses, Inc., licensee of Station WFKS(FM), Channel 250C2, St. Augustine, Florida, requesting the reallotment of Channel 250C2 from St. Augustine to Neptune Beach, Florida, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for requested Channel 250C2 at Neptune Beach, Florida, are 36–16–53 and 81–34–15.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 250C2 at Neptune Beach, Florida, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before June 18, 2001, and reply comments on or before July 3, 2001.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: F. William LeBeau; Hogan and Hartson, L.L.P.; 555 13th Street, NW.; Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 01–101 adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Neptune Beach, Channel 250C2, and removing Channel 250C2 at St. Augustine.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12164 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1093; MM Docket No. 01–102, RM–10100, MM Docket No. 01–103, RM–10102; MM Docket No. 01–104, RM–10103; MM Docket No. 01–105, RM–10104; MM Docket No. 01–106, RM–10105]

Radio Broadcasting Services; Plainville, GA; Rosholt, WI; Auburn, AL; Shiner, TX; and Pacific City, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes five new allotments to Plainville, Georgia; Rosholt, Wisconsin; Auburn, Alabama; Shiner, Texas; and Pacific City, Oregon. The Commission requests comments on a petition filed by Plainville Communications proposing the allotment of Channel 285A at Plainville, Georgia as the community's first local aural transmission service. Channel 285A can be allotted to Plainvllle in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.0 miles) northwest to avoid a short-spacing to the licensed site of Station WFSH–FM, Channel 284C1, Athens, Georgia. The coordinates for Channel 285A at Plainville are 34–25–58 North Latitude and 85–05–48 West Longitude. The Commission requests comments on a petition filed by Craig Norlin proposing the allotment of Channel 263A at Rosholt, Wisconsin, as the community's first local aural transmission service. Channel 263A can be allotted to Rosholt in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) northwest to avoid a short-spacing to the licensed sites of Station WIZD(FM), Channel 260C3, Rudolph, Wisconsin, and Station WNYC–FM, Channel 262, Neenah-Menasha, Wisconsin. The coordinates for Channel 263A at Rosholt are 44–40–12 North Latitude and 89–23–45 West Longitude. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before June 18, 2001, and reply comments on or before July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 418–2180.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Jerry D. Braswell, Plainville Communications, P.O. Drawer 90, Hawkinsville, Georgia 31036–0090 (Petitioner); Harry F. Cole, Esq., Bechtel & Coe, Chartered, 1901 L Street, NW., Suite 250, Washington, DC 20036 (Counsel for Craig Norlin); Lee G. Petro, Esq., Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005–3317 (Counsel for Auburn Network, Inc.); David P. Garland, President, Stargazer Broadcasting, Inc., P.O. Box 519, Woodville, Texas 75979 (Petitioner); and John L. Zolkoske, 915 N. Douglas Ave., Stayton, Oregon 97383 (Petitioner).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–102; MM Docket No. 01–103; and MM Docket No. 01–104, MM Docket No. 01–105 and MM Docket No. 01–106, adopted April 18, 2001, and released April 27, 2001. The full text of this Commission decision is available for spection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission requests comments on a petition filed by Auburn Network, Inc., proposing the allotment of Channel 263A at Auburn, Alabama, as the community's second local FM transmission service. Channel 263A can be allotted to Auburn in compliance with the Commission's minimum distance separation requirements site restriction of 3.2 kilometers (2.0 miles) south to avoid a short-spacing to the licensed site of Station WLXY(FM), Channel 263C1, Northport, Alabama. The coordinates for Channel 263A at Auburn are 32–34–54 North Latitude and 85–29–17 West Longitude.

The Commission requests comments on a petition filed by Stargazer Broadcasting, Inc., proposing the allotment of Channel 232A at Shiner, Texas, as the community's first local aural transmission service. Channel 232A can be allotted to Shiner in compliance with the Commission's minimum distance separation requirements site restriction of 5.1 kilometers (3.2 miles) west to avoid a short-spacing to the licensed site of Station KAJI(FM), Channel 231C3, Point Comfort, Texas. The coordinates for Channel 232A at Shiner are 29–25–59 North Latitude and 97–13–20 West Longitude. Since Shiner is located

within 320 kilometers (199 miles) of the U.S-Mexican border, concurrence of the Mexican government has been requested.

The Commission requests comments on a petition filed by John L. Zolkoske proposing the allotment of Channel 282A at Pacific City, Oregon as the community's first local aural transmission service. Channel 282A can be allotted to Pacific City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 282A at Pacific City are 45–12–09 North Latitude and 123–57–42 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303. 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 263A at Auburn.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Plainville, Channel 285A.

4. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Pacific City, Channel 282A.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Shiner, Channel 232A.

6. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Rosholt, Channel 236A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–12163 Filed 5–14–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH05

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Proposal To Designate Critical Habitat for the Wenatchee Mountains Checker-Mallow, and Notice of Availability of the Draft Economic Analysis for Proposed Critical Habitat for the Wenatchee Mountains Checker-Mallow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed designation of critical habitat for the Wenatchee Mountains checker-mallow (*Sidalcea oregana* var. *calva*), and the availability of the draft economic analysis for the plant's proposed designation of critical habitat. We are reopening the comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: We will accept public comments until June 14, 2001.

ADDRESSES: Written comments and information should be submitted to Manager, Western Washington Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE., Suite 102, Lacey, Washington 98503–1263. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information, contact Ted Thomas or James Michaels, at the above address (telephone 360/753–9440; facsimile 360/753–9518).

SUPPLEMENTARY INFORMATION:

Background

The Wenatchee Mountains checker-mallow (*Sidalcea oregana* var. *calva*) is an herbaceous perennial known from wetlands of the Wenatchee Mountains in central Washington. The plant ranges in height from 20 to 150 centimeters (8 to 60 inches), with pink flower clusters with one to many stalked flowers arranged singly along a common stem. The species occurs at six locations, all are known from Chelan County, Washington.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Sidalcea oregana* var. *calva* was listed as an endangered species on December 22, 1999 (64 FR 71680). Habitat fragmentation and destruction from alterations of hydrology, rural residential development, conversion of native wetlands to orchards and other agricultural uses, competition form nonnative plants, seed and plant collection, and fire suppression and the activities associated with fire suppression threaten *Sidalcea oregana* var. *calva*.

In April 2000, as a result of a suit from the Southwest Center for Biological Diversity and the Center for Biological Diversity, we reached a settlement agreement on when to publish a proposed and final critical habitat designation for *Sidalcea oregana* var. *calva*. We agreed to publish a proposed critical habitat designation for this species on or before December 31, 2000, and a final critical habitat designation on or before August 31, 2001.

On January 18, 2001, we published a proposed rule in the **Federal Register** (66 FR 4783) to designate critical habitat for *Sidalcea oregana* var. *calva*. The original comment period closed on March 19, 2001. We intend to reopen the comment period for an additional 30 days to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis.

We have proposed to designate critical habitat in one critical habitat unit totaling approximately 2,486 hectares (6,137 acres) in Chelan County, Washington. The area encompasses a majority of the Camas Creek and Pendleton Creek watersheds.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out,

funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *Sidalcea oregana* var. *calva,* we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing addresses in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Manager, Western Washington Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503–1263.

(2) You may send comments by electronic mail (e-mail) to: fw1wwo_checkermallow@r1.fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AH05'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Western Washington Office at telephone number 360/753–9440.

(3) You may hand-deliver comments to our Western Washington Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at ''www.r1.fws.gov'' or by writing to the Manager at the address under (1) above.

Author

The primary author of this notice is Ted Thomas (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 14, 2001.

Rowan W. Gould,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 01–12173 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990927266–0240–02; I.D. 072699A]

RIN 0648–AM62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of comment deadline.

SUMMARY: Under the Marine Mammal Protection Act, on March 19, 2001, NMFS published a proposed rule (66 FR 15375) to authorize the taking of marine mammals incidental to the world-wide deployment of the U.S. Navy's SURTASS LFA sonar. Please refer to this document for additional information on this proposed action. By this document, NMFS announces an extension of the comment deadline.

DATES: Comments must be postmarked no later than May 31, 2001. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS (301) 713–2055, ext 128.

A copy of the Navy's application is available and may be obtained by writing to this address or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Under section 101(a)(5)(A) of the Marine Mammal Protection Act, on March 19, 2001, NMFS published a proposed rule (66 FR 15375) to authorize the taking of marine mammals incidental to the world-wide deployment of the U.S. Navy's SURTASS LFA sonar. Please refer to this document for additional information on this proposed action.

On April 16, 2001 (66 FR 19413), NMFS announced an extension of the comment period until May 18, 2001, and the dates and locations for public hearings on this matter. By this document, the comment period for this proposed action is hereby extended until May 31, 2001.

Dated: May 9, 2001.

Wanda Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–12082 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 050901A]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; scoping process; request for comments.

SUMMARY: NMFS announces its intent to prepare a supplemental environmental impact statement (SEIS) to modify certain fishery management measures governing the Federally managed groundfish fisheries that are conducted in the Bering Sea and Aleutian Islands Area (BSAI) and the Gulf of Alaska (GOA) to protect the endangered Steller sea lion population.

The scoping process is occurring in parallel with meetings of the North Pacific Fishery Management Council (Council) and the Council's Reasonable and Prudent Alternative Committee. In addition to collecting scoping information at these meetings, NMFS is accepting written comments on the issues, alternatives, and impacts that should be considered in this analysis.

DATES: Written comments will be accepted through June 22, 2001. See **SUPPLEMENTARY INFORMATION** for meeting times and special accommodations.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the SEIS should be sent to Lori Gravel, Records Management Office, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or fax to (907) 586–7557. See **SUPPLEMENTARY INFORMATION** for meeting locations and special accommodations.

FOR FURTHER INFORMATION CONTACT: Tamra Faris, NMFS, P.O. Box 21668, Juneau, AK 99802, phone number (907) 586–7645, or tamra.faris@noaa.gov.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all fishery resources found within the U.S. exclusive economic zone (EEZ). The management of these fishery resources is vested in the Secretary of Commerce and in regional Fishery Management Councils. The North Pacific Fishery Management Council (Council) has the responsibility to prepare fishery management plans for those marine resources off Alaska, which it finds require conservation and management.

Management of the Federal groundfish fishery located off Alaska in the EEZ is carried out under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). These FMPs, their amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act. When implementing these FMPs, their amendments, and regulations, FMPs must also comply with other applicable Federal laws and executive orders, notably the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act, Executive Order 12866, and the Regulatory Flexibility Act.

In accordance with section 7 of the ESA, NMFS issued on November 30, 2000, a comprehensive Biological Opinion on both groundfish FMPs. The Biological Opinion determined that the BSAI and GOA walleye pollock, Pacific cod, and Atka mackerel fisheries as prosecuted under the FMPs and implementing regulations jeopardized a listed species, the western population of Steller sea lions, and that the FMPs adversely modified designated critical habitat of Steller sea lions due to competition for prey and modification of their prey field. The Biological Opinion included a Reasonable and Prudent Alternative (RPA) designed to mitigate the adverse effects of the FMPs and regulations. The November 30, 2000, RPA contains various protective measures such as total allowable catch reductions, critical habitat harvest limits, closure areas and an experimental monitoring program.

On December 21, 2000, Public Law 106–554 (Pub. L. 106–554) was signed by the President. Among other things, this law established a one-year phase in for implementing the November 30, 2000, RPA as well as provisions affecting its implementation in 2001. For 2002, Pub. L. 105–554 at section 209 (c)(2) states that the November 30, 2000, RPA will become fully effective on January 1, 2002, as revised if necessary and appropriate based on independent scientific review and other new information. As a result of this provision, the Council is developing alternatives to the November 30, 2000, RPA. NMFS has determined that changes to the FMPs and their implementing regulations to protect Steller sea lions may be controversial and could result in significant impacts on the human environment. Therefore, NMFS has decided that the decision making process should be informed through preparation of an SEIS.

Scoping Process

NMFS is seeking information from the public through the scoping process on the range of alternatives to be analyzed as well as environmental and economic issues to consider in the analysis. The scoping process for this SEIS consists of written comments received by NMFS in response to this Notice of Intent as well as public comments received at the Council and Council committee meetings described below. NMFS plans to issue a draft SEIS in August 2001 and a final SEIS in November 2001.

Alternatives

The alternatives currently under consideration for analysis in the SEIS include:

1. *Alternative A.* No Action. Regulatory measures implemented by emergency rule, and designed to protect Steller sea lions, would expire. Although this is not currently a viable alternative, as it is non-compliant with the ESA and P.L. 106-554, it is being analyzed because it is the no action alternative and will be useful for comparative purposes.

2. *Alternative B.* Implement the suite of Steller sea lion protection measures that were in place for the year 2000 pollock and Atka mackerel fisheries, and implement measures for the Pacific cod fishery that include seasonal apportionments and harvest limits within critical habitat.

3. *Alternative C.* Implement the measures detailed in Alternative B, and prohibit all trawling for groundfish within critical habitat (as was the case under the Court ordered injunction on the groundfish fisheries that began in August 2000).

4. *Alternative D.* Implement the November 30, 2000, RPA in its entirety.

5. *Alternative E.* Implement the RPA currently being developed by the Council and its Committees.

Public Meetings

Public comments on the scope of the analysis, the alternatives under consideration, and issues to be analyzed may be made at the following meetings and will be considered in preparation of the SEIS. The Council will be meeting in Kodiak, Alaska, on June 6 through11, 2001, at the Westmark Hotel, 236 West Rezanof Drive, Kodiak, AK. Steller sea lion fishery management measures will be discussed by the Council, the Council's Advisory Panel, and the Council's Scientific and Statistical Committee under item C–1 of the agenda. The Council's Steller Sea Lion RPA Committee will be meeting in Seattle, WA, on May 21 through 24, 2001, at the NMFS Alaska Fishery Science Center, Building 4 Room 2039, 7600 Sand Point Way NE, Seattle, WA.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen (907) 271–2809 at least 5 days before the meeting dates.

Dated: May 9, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–12218 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 94
Tuesday, May 15, 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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Board of Directors Meeting

TIME: 9 a.m. to 1 p.m.

PLACE: ADF Headquarters.

DATE: Friday, May 18, 2001.

STATUS: Closed.

Agenda

9 a.m.—Executive Session (Closed)
1 p.m.—Adjournment

If you have any questions or comments, please direct them to Doris Mason Martin, General Counsel, who can be reached at (202) 673–3916.

Nathaniel Fields,

President.

[FR Doc. 01–12387 Filed 5–11–01; 3:37 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: U.S. Census—Age Search.

Form Number(s): BC–600, BC–649(L), BC–658(L).

Agency Approval Number: 0607–0117.

Type of Request: Extension of a currently approved collection.

Burden: 1,775 hours.

Number of Respondents: 6,650.

Avg Hours Per Response: 9.5 minutes.

Needs and Uses: The Census Bureau maintains the 1910–1990 Federal censuses for searching purposes. Census 2000 records may be available for searching purposes at some point during the upcoming clearance period. Pursuant to Title 15 CFR Part 80, the Census Bureau will provide upon request and payment of established fees, transcripts of personal data from historical population census records. Information relating to age, place of birth, and citizenship is provided to individuals for their use in qualifying for social security, old age benefits, retirement, and passports, and for use in court litigation, insurance settlements, etc. The census records are confidential by an Act of Congress. The Census Bureau is prohibited by federal laws from disclosing any information contained in the records except upon written request from the person to whom the information pertains or to a legal representative. The age and citizenship searching service provided by the Census Bureau is a self-supporting operation. Expenses incurred in providing census transcripts are covered by the fees paid by individuals requesting a search of the census records.

This request is for extension of the public use forms currently used in searching census records. The Age Search forms gather information necessary for the Census Bureau to make a search of its historical population census records in order to provide the requested transcript.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 U.S.C., Section 8.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 10, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–12166 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On October 2, 2000, the Department of Commerce (the Department) published in the **Federal Register** (65 FR 58733) a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. The review period is August 1, 1999 to July 31, 2000. This review has now been rescinded because one party requesting the review withdrew its request, and the remaining exporter named in the request for review made no entries of subject merchandise for consumption in the United States during the period of review.

EFFECTIVE DATE: May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Nancy Decker, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398 or (202) 482–0196 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are

references to the provisions codified at 19 CFR part 351 (2000).

Scope of Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Department has determined that couplings, and coupling stock, are not within the scope of the antidumping order on OCTG from Mexico. See Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998.

Background

On August 31, 2000, petitioner on behalf of U.S. Steel Group, a unit of USX Corporation, requested an administrative review of Tubos de Acero de Mexico S.A. (TAMSA), a Mexican producer and exporter of OCTG, with respect to the antidumping order published in the **Federal Register** on August 11, 1995 (60 FR 41055). Additionally, respondent Hylsa, S.A. de C.V. (Hylsa) requested that the Department conduct an administrative review of Hylsa. We initiated the review for both companies on October 2, 2000 (65 FR 58733). On October 19, 2000, Hylsa withdrew its request and requested that the Department terminate the review with respect to Hylsa. On October 26, 2000, we received comments from TAMSA. On December 22, 2000, we received comments from petitioners. These comments are discussed below.

SUPPLEMENTARY INFORMATION: On October 26, 2000 TAMSA claimed that ''it did not export, directly or indirectly, enter for consumption, or sell, export or ship for entry for consumption in the United States subject merchandise during the period of review.'' Petitioner subsequently claimed on December 22, 2000, that publicly available import data from the Department's IM–145 database showed that 2,914 metric tons of seamless OCTG from Mexico entered the United States during the period of review. Petitioner asserted that TAMSA was the only producer of seamless OCTG in Mexico. In addition, petitioner claimed that subject merchandise produced by TAMSA was shipped from a third country and entered into the United States during the period of review. Petitioner requested that the Department investigate these transactions to determine whether this merchandise is subject to review.

In response to a telephone query on March 6, 2001, TAMSA indicated that it made no U.S. sales or consumption entries during the POR. TAMSA claimed all of its shipments to the United States were TIB entries, and were destined for re-export. TAMSA also indicated that it had no knowledge of its customers having entered covered merchandise into the United States for consumption. See Memorandum to File dated March 17, 2001.

During March 2001, the U.S. Customs Service (Customs) officially confirmed that the entries shipped by TAMSA to the United States were TIB entries. Customs also confirmed that none of these entries entered the customs territory of the United States during the POR for consumption. With respect to the third country shipment referenced by the petitioner, Customs officially confirmed on April 5, 2001 that the merchandise had been entered under the proper country of export (the third country) and that the merchandise was declared as being of Mexican origin and was entered subject to duty. Because this merchandise was exported to the United States by a party not affiliated with TAMSA and not subject to this review, and because there is no evidence that TAMSA had knowledge of the shipment or was involved with it in any way, we have determined that there are no shipments for purposes of this review. On April 18, 2001, the Department forwarded a no-shipment inquiry to the Customs for circulation to all Customs ports. Customs did not indicate to the Department that there was any record of consumption entries during the POR of OCTG exported by TAMSA.

Because there were no entries for consumption during the POR for OCTG for which TAMSA was the appropriate respondent, and because Hylsa withdrew its request for review, we are rescinding this review in accordance with the Department's practice. The cash deposit rate for these firms will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 2, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–12213 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–805, A–201–829]

Initiation of Antidumping Duty Investigations: Spring Table Grapes From Chile and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella (for Chile) or Irina Itkin (for Mexico) at (202) 482–0194 and (202) 482–0656, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

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 the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR part 351 (April 2000).

The Petitions

On March 30, 2001, the Department received petitions filed in proper form by The Desert Grape Growers League of California and its members (collectively ''the League''). The Department received information supplementing the petitions throughout the initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of spring table grapes from Chile and Mexico 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 an industry in the United States.

On April 12 and 13, 2001, we received submissions from the Asociacion Agricola Local de Productores de Uva de Mesa, A.C. (AALPUM) and the Asociacion de Exportadores de Chile (ASOEX), associations of exporters of the subject merchandise in Mexico and Chile, respectively, which challenged the basis for the petitioners' claim of industry support. On April 19, 2001, the petitioners filed a response. On April 24, 2001, AALPUM and ASOEX submitted additional comments on the issue of industry support, and the petitioners responded to these comments on April 30, 2001. Moreover, in April and May 2001, the Department received a number of letters from producers of table grapes in California opposing the petitions. In addition, we received several letters from California table grape producers supporting the petitions. The Department has taken these submissions into consideration in making the initiation determination.

Pursuant to section 732(c)(1)(B) the Department extended the deadline for initiation to no later than May 9, 2001.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (E) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the ''Determination of Industry Support for the Petitions'' section, below).

Scope of Investigations

The scope of these investigations includes imports of any variety of vitis vinifera species table grapes from Chile or Mexico, entered during the period April 1 through June 30, inclusive, regardless of grade, size, maturity, horticulture method (*i.e.,* organic or not) or the size of the container in which packed. The scope specifically covers all varieties of seedless or seeded grapes including, but not limited to, Thompson, Red Flame, Red Globe, Perlettes, Superior seedless, Sugrone, Ribier, Black seedless, Red seedless, Blanca Italia, Moscatel Rosada, Crimson seedless, Lavallee, Emperor, Queen Rose, Calmeria, Christmas Rose, Down seedless, Beauty seedless, Almeria, Supreme seedless, Superior Seedless M., Late Royal, Muscat seedless, Royal seedless, Early Ribier, Cardinal, Moscatel Dorada, Black Giant, Kaiji, Lady Rose, Black Diamond, Piruviano, Early Thompson, King Ruby seedless, White seedless, Queen seedless, Autumn seedless, Royal, Pink seedless, Green Globe, Autumn Black, Black Beauty, and Royal Giant. The scope specifically covers all table grapes entered within the April 1 through June 30 window of each year, whether or not subject to the Federal Marketing Order set forth in 7 CFR, part 925. For further discussion, see the May 9, 2001, memorandum from the case team to Richard Moreland and Joseph Spetrini entitled ''Temporal Limitations on the Class or Kind Described in the Antidumping Duty Petitions on Spring Table Grapes from Mexico and Chile.''

The scope excludes by-product grapes and other grapes for use as other than table grapes, including those grapes used for raisins, crushing, juice, wine, canning, processed foods and other by-product and not direct consumption purposes.

The spring table grapes subject to these investigations are classifiable under subheading 0806.10.40 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. We note that the scope in the petitions included all spring table grapes harvested through June 30 of each year. However, the U.S. Customs Service has informed us that including a harvesting limitation would lead to problems in its administering these cases. *See* the April 11, 2001, memorandum from Chief, Special Products Branch at the United States Customs Service to David Goldberger entitled ''Proposed Scope Language, Spring Table Grapes from Chile and Mexico.'' We agree that including grapes harvested through June 30 will raise major questions for imports after June 30. As a consequence, we have not included spring table grapes harvested during the period April 1 though June 30 but entered after that period in the scope of the merchandise under investigation. We have discussed this scope modification with the petitioners.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all 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 determinations.

Class or Kind

In addition to describing the physical product at issue, the antidumping duty petitions on spring table grapes from Mexico and Chile limit the class or kind to table grapes entered in the spring. Parties have argued that the Department does not have the authority to accept a class or kind limited to imports during certain periods, or, in the alternative, that the temporal limitations in this case are not appropriate. However, in the view of the Department the statute does not preclude a limitation on subject merchandise according to the time of year during which that merchandise was produced or entered. Section 771(25) of the Act only defines the term subject merchandise in pertinent part as the ''class or kind of merchandise that is within the scope of an investigation. * * *'' However, neither the term ''class or kind'' nor the term ''scope'' is defined in the statute.

It is well established that the Department has the ultimate authority under the statute to define the class or kind of merchandise subject to its

proceedings.[1] Thus, the Department has the authority both to limit and to expand the class or kind alleged in the petition.[2] This authority notwithstanding, it has generally been the policy of the Department to accept the class or kind of merchandise alleged in the petition absent some overarching reason to modify that class or kind.[3] This policy stems from the fact that the domestic industry is in the best position to identify the imports that they compete against and believe to be unfairly traded.[4]

Moreover, a petitioning industry often must draw a bright line between the imports it wants covered and those it does not. To the extent it can establish that the covered imports are dumped and the cause of material injury, it is entitled to relief under the statute, notwithstanding the fact that it may have excluded from the scope other products which may or may not also be the subject of injurious dumping. It is appropriate not to make imports the subject of unnecessary antidumping proceedings. It is also appropriate that the Department not force the petitioner to seek duties on products against its will.

In the present case, the petitioners have drawn a legitimate line between those products they believe to be appropriately covered, and those they do not. First, the existence of a separate HTS number for the April 1–June 30 period (*i.e.* HTS 0806.10.40) supports a finding that such a period appropriately can form a class or kind of merchandise. The Department has often stated that its determination as to the appropriate coverage of an investigation is not determined by HTS categories. However, the fact that the period of April through June falls under a separate HTS category reflects the fact that imports during this season are recognized by industry and other U.S. government agencies as distinct from other imports. In both cases the petitioners have rationally identified those imports which directly compete with their product, and excluded from the investigation those imports which they are not concerned about. Imports from Chile and Mexico during the April 1 through July 30 period compete with spring grape production in the United States, which begins in May and continues through July.

For all of these reasons we have determined that these cases can proceed on the basis of a class or kind defined in part by the April 1 through June 30 period.

Determination of Industry Support for the Petitions

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 the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. 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. Moreover, 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 Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers 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 both the Department and the ITC must apply the same statutory definition regarding the domestic like product (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 like product, such differences do not render the decision of either agency contrary to the law.[5]

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 subtitle.'' 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.

The domestic like product described in the petitions is spring table grapes sold for fresh use, regardless of variety. Based upon our review of the petitioners' claims, we concur that there is a single domestic like product: spring table grapes sold for fresh consumption. For further discussion, see the May 9, 2001, from the case team to Richard Moreland and Joseph Spetrini memorandum entitled ''Domestic Like Product and Industry Support.''

Concerning industry support, for both countries covered by the petitions, the petitioners claimed that they represent the majority of the spring table grapes industry, defined as growers of U.S. table grapes in the period April through June. We find that the spring table grapes industry consists of those producers who harvest grapes predominantly during this period (*i.e.*, those producers in the Coachella Valley of California and western Arizona).

[1] *See Mitsubishi Elec. Corp.* v. *United States,* 898 F.2d 1577, 1582 (Fed. Cir. 1990); and *Diversified Products Corp.* v. *United States,* 572 F.Supp. 883, 887 (1983). *See also Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1582 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022 (1984).

[2] *See Mitsubishi Elec. Corp.* v. *United States,* 700 F.Supp. 538, 555 (1988), aff'd, 898 F.2d 1577 (Fed. Cir. 1990); and *Torrington Co.* v. *United States,* 745 F.Supp. 718, 721 n4 (CIT 1990).

[3] In many cases the Department has used the so-called ''Diversified Products'' criteria in analyzing class or kind issues. See 19 CFR § 351.225(k)(2). However, these criteria are not used to expand the class or kind defined in the petition, but rather to determine whether a particular product is within the class or kind as defined or, more rarely, to determine whether the scope as alleged actually covers several classes or kinds. See, e.g. *Partial Recission of Initiation of Antidumping Investigations and Dismissal of Petitions; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania, Singapore, and Thailand,* 53 FR 39327 (October 6, 1988) (Department split one class or kind in to five classes or kinds); and *Cyanuric Acid and Its Chlorinated Derivatives from Japan Used in the Swimming Pool Trade; Final Determination of Sales at Less Than Fair Value,* 49 FR 7424 (1984) (Department split one class or kind into three classes or kinds). In other words, absent some overarching reason to the contrary, the fact that application of the ''Diversified Products'' criteria reveals that a particular product which is excluded from the scope could be considered within the same class or kind will not normally result in including that product in the coverage of the investigation for reasons discussed above: to the extent the petitioners are not interested in seeking trade relief against a particular product, the Department should not require them to do so. There does not appear to be any such reason to depart from this approach in this case.

[4] *See Torrington,* 745 F.Supp. at 721. (''The petitioner's description of class or kind is awarded some deference inasmuch as the petitioner often will call Commerce's attention to an otherwise overlooked potential dumping problem.'').

[5] *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).

Consequently, we find that the petitioners established industry support by demonstrating that they account for over 25 percent of total production of the domestic like product (*see Antidumping Investigations Initiation Checklist,* dated May 9, 2001 (*Initiation Checklist*), thereby meeting the first requirement under section 732(c)(4)(A) of the Act.

We note that in 2000 a small amount of production by the Coachella Valley and western Arizona producers actually occurred in July. However, even if we include all U.S. production data for July in our determination of industry support, we would find that the petitioners established industry support by demonstrating that they account for over 25 percent of total production of the domestic like product (*see* the May 9, 2001, memorandum from the team to Richard W. Moreland and Joseph Spetrini entitled ''Industry Support Calculations in the Antidumping Duty Petitions on Spring Table Grapes from Chile and Mexico'' (the Industry Support Memo). In making this determination, we observe that by including July the petitioners would represent less than 50 percent of the domestic production of the like product in the April through July period. For this reason, we have additionally examined industry support as required by section 732(c)(4)(D) of the Act considering the positions of each company with production in the April through July period which expressed an opinion on the petitions. We find that, based on this additional information, there is still sufficient support for the petition. Specifically, we find that the companies supporting the petitions represent over 50 percent of the production of companies that have expressed support or opposition to the petitions. Furthermore, because we have determined that several additional companies have taken neutral positions with respect to the petitions, we find that any additional potential opposition could not possibly represent over 50 percent of the industry. *See* the Industry Support Memo. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(c)(4)(A) of the Act.

Constructed Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. price, home market price, third country price, and constructed value (CV) are also discussed in the *Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Chile

Constructed Export Price

The petitioners identified ten of the largest export trading companies which account for sixty percent by volume of spring table grape exports to the United States during the year 2000. The ten exporters are: David del Curto S.A., Dole Chile S.A., Exportadora Rio Blanco Ltda., Exportadora Agua Santa S.A., Exportadora Chiquita-Enza Chile Ltda., Del Monte Fresh Produce S.A., (formerly United Trading Company), Servicios de Exportaciones Fruiticolas Ltda., Sociedad Agro Comercial Verfrut Ltda., Exportadora Aconcagua Ltda., Exportadora Unifruitti Traders Ltda. The petitioners used information obtained through foreign market research to demonstrate that the prices negotiated by the U.S. importers/distributors of spring table grapes to their customers in the U.S. market on behalf of Chilean exporters are the prices that should be used to determine dumping margins for grapes exported from Chile. To the best of the petitioners' knowledge, the exporter is the first party in the chain of distribution that has knowledge of the ultimate destination of the merchandise. In this case, the exporters sell the grapes in the United States through affiliated or unaffiliated importers/distributors. Accordingly, it is appropriate to use constructed export price (CEP) based on the prices of the sales by the U.S. importers/distributors in the United States. However, the petitioners were unable to obtain these prices. For purposes of the petition, petitioners obtained through foreign market research the corresponding FOB Chile prices (*i.e.,* the resulting price after the deduction of all relevant expenses from the prices of sales in the United States). These prices are based on data compiled by ODEPA, an official government agency of Chile. The average FOB Chile prices obtained through foreign market research are consistent with the average FOB values in the official U.S. import statistics. (*See* Exhibit B–13 of the petition.)

Normal Value

With respect to normal value (NV), information reasonably available to the petitioners indicates the existence of a particular market situation which renders price comparisons between home market and U.S. prices inappropriate. The factors cited by the petitioners as evidence of a particular market situation in Chile with respect to spring table grapes are the same factors present in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411 (June 9, 1998): (1) The Chilean table grape industry is export-oriented; (2) the home market is incidental to the Chilean industry; (3) the home market is comprised almost exclusively of grapes graded as other than export quality; (4) the home market sales are made at drastically reduced prices compared to the export quality merchandise; and (5) domestically-sold spring table grapes had perfunctory marketing and distribution. As a result, the petitioners obtained information through foreign market research for nine Chilean exporters with respect to sales to third country markets. The petitioners obtained information demonstrating that the Netherlands, Hong Kong/People's Republic of China, and Mexico are by far the principal third country export markets for Chilean spring table grapes. The petitioners relied on exporter-specific data to determine the largest third country market by exporter and then based NV for that exporter on its sales to that market.

In the course of this investigation, the Department will examine further the issue of particular market situation and the proper comparison market to be examined in this investigation.

Based upon the comparison of CEP to NV, the estimated dumping margins range from 23.00 to 99.39 percent.

Mexico

Constructed Export Price

According to the petitioners, U.S. sales of the subject merchandise should be considered CEP sales, as the first sales to unaffiliated customers in the United States are made by brokers/commissionaires in the United States on behalf of the Mexican producers.

The petitioners based CEP on U.S. export price data from two Mexican growers' associations. According to the petitioners, these prices are packed, FOB shipping prices in Nogales, Arizona. To calculate CEP, the petitioners deducted a distributor's commission (*i.e.,* distributor mark-up), cold storage and palletization costs, and movement expenses (*i.e.,* foreign inland freight, U.S. border crossing fees, USDA inspection fees, and U.S. inland freight) from the price quotes. The information

for all of these adjustments except foreign inland freight, palletization and cold storage expenses were based on the actual documentation of U.S. sales transactions. The other information was obtained from the petitioners' foreign market research. The petitioners also made an adjustment for credit expenses based on the payment terms claimed to be typical for the industry and the average lending rate in the United States during the second quarter of 2000, as published in *International Financial Statistics.*

Normal Value

The petitioners based NV on CV because they claimed that all of the prices that they obtained in the home market were made below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act. As a consequence, they alleged that there are reasonable grounds to believe or suspect that sales of the subject merchandise in the home market were made at below-cost prices and they requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM), selling, general, and administrative (SG&A) expenses, and packing expenses. The petitioners calculated COM, SG&A expenses, and packing expenses for three varieties of grapes based on costs contained in foreign market research studies for grapes produced in Mexico. We adjusted the petitioners' calculations of the COPs by excluding the amounts for selling expenses, because these expenses were deducted, in part, from the home market sales prices.

With respect to home market price, the petitioners obtained Mexican home market daily wholesale prices through the Mexican National Market Information System. The petitioners made a deduction from home market price for foreign inland freight obtained from foreign market research. Additionally, the petitioners deducted distributor markups using the percentage applied to CEP sales as they were unable to obtain comparable Mexican price information.

The petitioners claimed that their foreign market research showed that there are no other fees, such as inspection or cold storage expenses, incurred on home market sales. However, based on the description of the harvesting and distribution system, we find it unlikely that grapes in the home market underwent no cold storage at all. For purposes of the initiation, we included an adjustment for cold storage expenses to the net home market price based on the same information applied to CEP.

Based upon a comparison of the prices of the foreign like products in the home market to the calculated COPs of those products, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV on CV. The petitioners calculated CVs for three varieties of grapes using the same COM, SG&A and packing expense figures used to compute the home market costs. The petitioners, using a conservative approach, did not include an amount for profit in their calculation of CV as provided by section 773(e)(2) of the Act. We adjusted the petitioners' calculations of CV by excluding the amounts of selling expenses the petitioners included in SG&A expenses.

The petitioners claimed that their foreign market research showed that there are generally no credit expenses incurred on home market sales. However, our review of the petition documentation indicates that home market credit expense may be incurred on some sales. Therefore, for purposes of the initiation, we included an adjustment to CV for Mexican credit expenses using the payment terms data applied to the CEP sales and the Mexican interest rate published in *International Financial Statistics.*

Based upon the comparison of CEP to CV, the revised calculated estimated dumping margins range from 0 to114.77 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of spring table grapes from Chile and Mexico are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating income, net sales volume and value, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on spring table grapes, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of spring table grapes from Chile and Mexico are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Chile and Mexico. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than June 4, 2001, whether there is a reasonable indication that imports of spring table grapes from Chile and Mexico are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigations being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010412091–1091–01; I.D. 040501D]

RIN 0648–ZB05

Financial Assistance for Research and Development Projects in Chesapeake Bay to Strengthen, Develop and/or Improve the Stock Conditions of the Chesapeake Bay Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: A total of up to $1,315,000 in Fiscal Year (FY) 2001 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments in carrying out research and development projects that address various aspects of Chesapeake Bay fisheries (commercial and recreational), including coastal and estuarine research, monitoring, and assessment; fisheries research and stock assessments; data management; and, multiple species interactions through cooperative agreements. About $425,000 of the base amount is available to initiate new projects in FY 2001, as described in this announcement. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending acceptable scientific review. These projects include multispecies monitoring program designs, and hard clam and oyster stock assessments. NMFS issues this document to set forth how to apply for financial assistance and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program must be received by 5 p.m. eastern daylight savings time on June 14, 2001. Applications received after that time will not be considered for funding. No applications will be accepted by facsimile machine submission.

ADDRESSES: Send completed applications to: Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Derek Orner, 410/267–5660; or e-mail: *derek.orner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority. The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753 (a), authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2001 makes funds available to the Secretary.

B. Catalog of Federal Assistance (CFDA). The research to be funded is in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Stock Assessment Committee (CBSAC).

C. Program Description. CBSAC was established in 1985 to plan and review Baywide resource assessments, coordinate relevant actions of state and federal agencies, report on fisheries status and trends, and determine, fund and review research projects. The program implements a Baywide plan for the assessment of commercially, recreationally, and selected ecologically important species in the Chesapeake Bay. In 1988, CBSAC developed a Baywide Stock Assessment Plan, in response to provisions in the Chesapeake Bay Agreement of 1987. The Plan identified that key obstacles to assessing Bay stocks was the lack of consistent, Baywide, fishery-dependent and fishery-independent data. Research projects funded since 1988 have focused on developing and improving fishery-independent surveys and catch statistics for key Bay species, such as striped bass, oysters, blue crabs and alosids. Stock assessment research is essential, given the recent declines in harvest and apparent stock condition for many of the important species of the Chesapeake Bay.

D. Funding Availability. This document describes how interested persons can apply for funding under the Chesapeake Bay Studies Program, and how funding decisions will be made.

Funding for projects depends on an allocation of funds by Congress for the NOAA Chesapeake Bay Office in Fiscal Year (FY) 2001. This solicitation announces that funding of up to $1,375,000 may be available through the Chesapeake Bay Studies Program. This announcement does not guarantee that sufficient funds will be available to make awards for all selected applications submitted under this program.

II. Funding Priorities

A. In developing a research proposal, applicants should address one or more of the following funding priorities:

(1) *Stock Assessment Research*—Consideration for funding will be given to applications that address the following stock assessment research and management priorities for the Chesapeake Bay. These priorities are not listed in any particular order:

(a) Assessments of the abundance, productivity, distribution, and exploitation patterns of important Chesapeake Bay finfish and shellfish resources. Proposals may include research on life history characteristics, stock-recruitment relationships, and schedules of vital rates. Descriptions of stock structure, demographics and spatial distribution would also be appropriate. It is anticipated that proposals will combine analyses of existing fishery-dependent and fishery-independent data. Proposals focusing on soft clams are particularly encouraged.

(b) Blue Crab Recreational Survey—Projects should:

i. Review the work previously conducted on the development of methods for conducting a Baywide recreational survey;

ii. Implement on a Baywide scale based on earlier work;

iii. Provide reliable estimates of recreational catch, fishing effort, catch rates, size composition, and sex ratios for all components of the blue crab recreational fisheries.

(c) Blue Cab Stock Assessment Analyses—Projects should:

i. Provide analyses which may corroborate the results of the length-based estimates of fishing mortality rates (current estimates based on 120 mm or greater carapace width) and investigations into the relative exploitation rates on peeler size blue crabs.

ii. Provide analyses of the trends in relative exploitation rates on blue crab, according to major gear types used in the commercial fishery.

iii. Develop methods for estimation of Baywide commercial fishing effort and conduct a pilot study to test the methods.

iv. Design and develop an integrated Baywide blue crab mark and recapture

study that will provide information on growth, natural mortality, fishing mortality, size selectivity, catchability, reporting rates and the distribution of harvest among the fisheries. Results should be informative with respect to the reproductive frequency of female crabs, and longevity. Recognizing the scope of this project, subcomponents that will help in contributing to the development of a Baywide framework for this project will be accepted. Projects proposing tagging of adult female crabs utilizing external tags, and projects proposing tagging of both male and female crabs including the development and use of internally anchored tags which persist through the molting process are both encouraged.

(d) Design of a method/survey to estimate the Baywide abundance of oysters in Chesapeake Bay. The purpose of this survey will be to track progress towards achieving the Chesapeake Bay Program goal of increasing the oyster population ten-fold by the year 2010. The investigators should take into consideration existing state surveys and other work that already fulfill various data needs.

(e) Improvement or implementation of the collection of fishery-dependent data within Chesapeake Bay. Projects can involve either the commercial and/or recreational components of the fishery. Projects should focus on collecting biological data (size, sex, age, diet), and catch and effort data from Baywide harvests of significant finfish and shellfish fisheries to provide accurate, statistically representative information on the spatial and temporal characteristics of the harvest. Proposals may involve designs for port-sampling of landings, or on-board analysis of the catch, analysis of intercepts and telephone surveys. Proposals that document information on by-catch would be relevant.

The proposals should recognize current efforts to collect biological data from Bay fisheries and attempt to define the optimal, regional (Maryland, Potomac River Fisheries Commission, and Virginia jurisdictions) sampling program. Proposals focusing on the blue crab commercial fishery are particularly encouraged.

(2) *Multispecies Management or Research*—The Chesapeake Bay is a complex and dynamic ecosystem that supports many fisheries that are economically important both regionally and nationally. To date, these resources have been managed on a single species basis. While the single species approach has served us well, the existence of both biological and technical (by-catch) interactions in most Chesapeake Bay fisheries points to the need to move toward a wider, multispecies perspective. This viewpoint was wholeheartedly endorsed at a workshop of regional, national and international scientists held to address the potential utility of multispecies approaches to fisheries management in the Chesapeake Bay (STAC Publication 98-002, *www.chesapeake.org*). The ultimate objective of this research and monitoring is to lead to the development of an ecosystem plan for Chesapeake Bay fisheries, within which the rational exploitation of individual species can be determined.

Consideration for funding will be given to applications that address the following multispecies management and research priorities for the Chesapeake Bay. It should be realized that certain priorities may require a larger funding commitment, although the priorities are not listed in any implied order:

(a) Fishery-independent Surveys. Plan, develop and initiate coordinated Baywide surveys to regularly estimate species abundances, trends and biological characteristics (e.g., age/size structure, recruitments, growth and mortality rates, food habitats) for economically and ecologically important key species. Proposals within this task may:

i. Review and assess existing fishery independent sampling programs conducted by regional agencies to evaluate their potential applicability to the Chesapeake Bay. This may include evaluation of the use of fixed and random sampling protocols, with or without stratification, and the sampling characteristics of different gear types.

ii. Develop and initiate a Baywide, coordinated, fishery-independent survey that may include multiple gear, such as benthic and midwater trawling, and hydroacoustics to characterize the status and trends in the abundance, distribution and characteristics of key Chesapeake Bay finfish and shellfish.

(b) Retrospective Analyses. Document and quantify multispecies interactions among economically and ecologically important finfish and shellfish within the Chesapeake Bay. The proposed work should lead to the identification of the 'strong' interactions within the Chesapeake Bay fisheries system. Work may involve analysis of commercial and recreational catch and effort data, the analysis of the patterns of diets and energy flows within the fisheries system, or multivariate analyses of abundance relationships within the fisheries system and their relationship to environmental and habitat characteristics.

(c) Multispecies Assessment / Ecosystem Modeling. Apply and assess alternative multispecies fisheries models to the Chesapeake Bay fisheries systems. The submitted proposal should detail the development of a multispecies or ecosystem model focusing on core Chesapeake Bay species. Examples of possible approaches include, but are not limited to: multispecies biomass dynamic, multispecies yield per recruit, Multi species virtual population analysis, multispecies bioenergetics, spatial-physical predator-prey, trophic production and ecosystem simulation models. Model approaches should seek to predict constraints and patterns in the fisheries production of the Chesapeake Bay system.

III. How To Apply

A. *Eligible applicants.* Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

B. Duration and Terms of Funding. Under this solicitation, NMFS will fund Chesapeake Bay Stock Assessment Research Projects as 12-month cooperative agreements. The cooperative agreement has been determined to be the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;
2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay stock assessments;
3. Monitoring the progress of each funded project;
4. Holding periodic workshops with investigators; and
5. Working with recipients to prepare annual reports summarizing current accomplishments of the Chesapeake Bay Stock Assessment Committee.

Project dates should be scheduled to begin no later than 1 October 2001. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to

obligate any part of the entire amount of funds available.

C. *Cost-sharing Requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations.

D. *Format.* 1. Applications for project funding must be complete and must follow the format described. Applicants must identify the specific research priority or priorities to which they are responding. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should so state. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

Applications must not be bound and must be one-sided. All incomplete applications will be returned to the applicant. Applicants are required to submit 1 signed original and 2 copies of the proposal.

2. Applications must be submitted in the following format:

(a) *Cover sheet:* An applicant must use Office of Management and Budget (OMB) Standard Form 424 (revised 4/92) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division, the NOAA Chesapeake Bay Office (see **ADDRESSES**) or from the NOAA Grants website, *http://www.rdc.noaa.gov/grants.*

(b) *Project summary:* Each proposal must contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s) (PI).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(c) *Project description*— (*including results from prior support*): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: objectives for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or underway under Federal Assistance. The project description must not exceed 15 pages in length. Visual materials, including charts, graphs, maps, photographs and other pictorial presentations are not included in the 15-page limitation. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of problem(s):* Describe the specific problem to be addressed (see section II).

(2) *Project objectives:* The project description must identify the following three project objectives: 1. Identify the specific priority listed earlier in the solicitation to which the proposed projects respond, if any; 2. Identify the problem/opportunity you intend to address and describe its significance to the fishing community; and 3. State what you expect the project to accomplish.

If you are applying to continue a project previously funded under the Chesapeake Bay Studies Program, describe in detail your progress to date and explain why you need additional funding.

Objectives should be:

(a) Simple and easily understandable.

(b) As specific and quantitative as possible.

(c) Clear with respect to the ''what and when'' and should avoid the ''how and why.''

(d) Attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(3) *Results from Prior Chesapeake Bay Studies Support:* If any PI or co-PI identified on the project has received Chesapeake Bay Studies (CBSAC) support in the past 5 years, information on the prior award(s) is required. The following information must be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award;

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(4) *Need for Government Financial Assistance:* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(5) *Benefits or Results Expected:* Identify and document the results or benefits to be derived from the proposed activities.

(6) *Project Statement of Work:* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. A detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c(5)(d)) that are to be attained in each project month covered by the Statement of Work. Table format should follow

sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November ...)

(7) *Federal, State and Local Government Activities:* List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project Management*: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) *Monitoring of Project Performance*: Identify who will participate in monitoring the project.

(10) *Project Impacts*: Describe how these products or services will be made available to the fisheries and management communities.

(11) *Evaluation of Project:* The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) *Total Project Costs:* Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF-424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

d. *Supporting Documentation:* Applicants should provide any additional documents necessary to establish the assertions made in their proposals and to assist the reviewers in understanding how the project would address the identified problem or issue. The total volume of such additional documentation must not exceed 20 pages.

IV. Review Process and Criteria

A. *Initial Evaluation of Applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement, including eligibility and relevance to the Chesapeake Bay Stock Assessment Research Program. Proposals that do not support the technical and management priorities of the Chesapeake Bay, as defined in section II.A., will not be considered for funding.

B. *Consultation with Experts in the Field of Stock Assessment Research.* For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation (via mail) of each project. This review normally will involve experts from both NOAA and non-NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to score and comment based on the following four criteria (total of 100 possible points):

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and proposed method of resolving the problem(s) (30 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project (35 points).

3. Project management and experience and qualifications of personnel(15 points).

4. Justification and allocation of the proposed budget(20 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regionally recognized experts in the scientific and management aspects of stock assessment research.

Each individual panel member will:

1. Provide independent review based on the same criteria and scoring as the technical review.

2. Provide a numerical score and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

The review panel will collectively:

1. Discuss all review comments, incorporating the evaluation provided by the technical reviewers.

2. Numerically rank the submitted applications in recommended funding order.

D. *Funding Decision.* After applications have been evaluated and ranked numerically for funding by the review panel, the Chief of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator (AA) for Fisheries, NOAA, will determine which project or projects will be recommended for funding based upon the technical evaluations and panel review comments, and determine the amount of funds available for the program. The review panel's numerical ranking will be the primary consideration for deciding which of the proposals will be selected for funding. In making the final selections, NOAA/NMFS may consider costs, geographical distribution, inter-jurisdictional and inter-institutional collaboration and duplication with other federally funded projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. The Chief of the NOAA/NMFS Chesapeake Bay Office will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

V. Administrative Requirements

A. Obligations of the applicant

1. Periodic Workshops—Investigators will be expected to attend one or two workshops with other Stock Assessment Research Program researchers to encourage interdisciplinary dialogue and collaboration.

2. Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

a. *Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed earlier applies;

b. *Drug-free Workplace*—Grantees (as defined at 15 CFR part 26.605) are subject to 15 CFR part 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants),'' and the related section of the certification form prescribed above applies;

c. *Anti-lobbying*—Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions, and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000.

d. Anti-lobbying Disclosure—Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

3. *Lower Tier Certifications*—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

B. Other requirements. 1. Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

2. Indirect Cost Rates—The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government. The total dollar amount of the indirect costs proposed in the application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

3. Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

4. Financial Management Certifications/preaward Accounting Survey—Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

5. *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(a) The delinquent account is paid in full;

(b) A negotiated repayment schedule is established and at least one payment is received; or

(c) Other arrangements satisfactory to DOC are made.

6. *Name Checks*—Potential recipients may be required to submit an ''Identification-Application for Funding Assistance'' (Form CD-346), which is used to ascertain background information on key individuals associated with the potential recipient. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Applicants will also be subject to credit check reviews.

7. *False Statements*—A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

9. *Purchase of American-made Equipment and Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Pub. L. 103-317, sections 607(a) and (b).

10. *Other*—If an application is selected for funding, DOC has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

This action has been determined to be ''not significant'' for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(a)(2), prior notice and and opportunity for public comment are not required under the Administrative Procedure Act for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the

Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under their respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection-of-information displays a currently valid OMB control number.

Dated: May 9, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries

[FR Doc. 01–12219 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050701D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Oversight Committee in May, 2001. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, May 30, 2001, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–7000.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: The committee will review the Skate Plan Development Team Report. The agenda will include finalization of draft Skate Fishery Management Plan alternatives for public hearings for Council approval at the June 13-14, 2001 Council meeting; alternatives may include specifications for a skate permit and catch reporting system, prohibitions on the possession of certain skate species, management measures for the bait and/or wing fishery, possession limits, modification of regulations pertaining to the current southern New England skate exemption areas, gear restrictions, and/or any other appropriate measures. The committee will also discuss a control date for skate fishing.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–12216 Filed 5–14–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Request Under the United States–Caribbean Basin Trade Partnership Act (CBTPA)

May 11, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUMMARY: On May 8, 2001 the Chairman of CITA received a petition on behalf of The Freudenberg Nonwovens Group alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex, classified in subheading 5603.11.0090, 5603.12.0090, 5603.13.0090 or 5603.14.9090 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that the President proclaim that apparel articles of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by May 30, 2001 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND: The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President has proclaimed such treatment. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On May 8, 2001 the Chairman of CITA received a petition on behalf of The Freudenberg Nonwovens Group alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex, classified in HTSUS subheading 5603.11.0090, 5603.12.0090, 5603.13.0090 or 5603.14.9090, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn or otherwise assembled in one or more CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than May 30, 2001. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–12282 Filed 5–11–01; 11:47 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: May 22, 2001, 9:30 a.m.–12:30 p.m.

PLACE: Hilton Jackson, 1001 East County Line Road, Jackson, Mississippi.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Committees of the Board of Directors will report on their activities. In addition, the Board will engage in discussions with representatives of the following: Mississippi Commission for Volunteer Service; Association of Retired and Senior Volunteer Program Directors; National Association of Foster Grandparent Program Directors; National Association of Senior Companion Project Directors; Service-Learning Lighthouse Partnership; Teach for America; and the Mid-South Promise Partnership.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Deputy Director of Public Liaison, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794. TDD: (202) 565–2799.

Dated: May 10, 2001.

Frank R. Trinity,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 01–12327 Filed 5–11–01; 12:51 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Supplement Part 204, Administrative Matters, and related Clauses at 252.204; DD Forms 2051 and 2051–1; OMB Number 0704–0225.

Type of Request: Extension.

Number of Respondents: 22,602.

Responses per Respondent: 1.

Annual Responses: 22,602.

Average Burden per Response: 36 minutes (0.61 hours).

Annual Burden Hours: 13,758.

Needs and Uses: The Department of Defense uses this information to control unclassified contract data that is sensitive and inappropriate for release to the public; and to facilitate data exchange among automated systems for contract award, contract administration, and contract payments by assigning a unique code to each DoD contractor. DFARS 204.404–70(a) prescribes use of the clause at DFARS 252.204–7000, Disclosure of Information, in contracts that require the contractor to access or generate unclassified information that may be sensitive and inappropriate for release to the public. The clause requires the contractor to obtain approval of the contracting officer before release of any unclassified contract-related information outside the contractor's organization, unless the information is already in the public domain. DFARS 204.603(1) prescribes use of the provision at DFARS 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when CAGE codes for potential offerors are not available to the contracting officer. The provision requires an offeror to enter its CAGE code on its offer. If an offeror does not have a CAGE code, the offeror may request one from the contracting officer.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. David M. Pritzker.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 8, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–12117 Filed 5–14–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: June 4–5, 2001.

Time of Meeting: 0830–1545, June 4, 2001; 0830–1545 June 5, 2001

Place: Presidential Towers, Arlington, VA, 9th Floor conference room.

Agenda: The Army Science Board's (ASB) panel will conduct an Ad Hoc Study on ''Adapting Future Wireless Communication'' to examine future commercial wireless capabilities and recommend which capabilities may have applicability for the Objective Force. The meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Jeff Ozimek, Army Science Board Staff Assistant, 732–532–5496 or Ms. Lisa Calabrese, Army Science Board Staff Assistant Assistant, 732–427–4646.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 01–12201 Filed 5–14–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: May 23, 2001.

Time of Meeting: 0830–1545, May 23, 2001.

Place: Battle Lab, Ft. Gordon GA

Agenda: The Army Science Board's (ASB) panel will conduct an Ad Hoc Study on ''Adapting Future Wireless Communication'' to examine potential future commercial wireless capabilities and recommend which capabilities may have applicability for the Objective Force. The meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Jeff Ozimek, Army Science Board Staff Assistant, 732–532–5496 or Ms. Lisa Calabrese, Army Science Board Staff Assistant, 732–427–4646.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 01–12202 Filed 5–14–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 9, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Applications for Title VI International Education Programs.

Frequency: Annually or tri-annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 528.

Burden Hours: 38,625.

Abstract: Seven Title VI International Education Applications. These include: Business and International Education; Group Projects Abroad; International Research and Studies; Undergraduate International Studies and Foreign Language; National Resource Centers and Foreign Language Area Studies Fellowships; American Overseas Research Centers; and Language Resource Centers.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. You may also call Ms. Reese at (202) 708–9902 or fax your request to her attention at 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–12156 Filed 5–14–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 2001. This notice is required under section 114(c) of the Higher Education Act (HEA), as amended.

What Is the Role of the National Advisory Committee?

The National Advisory Committee is established under section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 09/30/01

- Mrs. Wilhelmina R. Delco (Committee Chairperson), Retired Member of Texas House of Representatives
- Dr. Alfredo G. de los Santos, Jr., Research Professor, Hispanic Research Center, Arizona State University
- Dr. Kenneth B. Orr, President Emeritus, Presbyterian College, South Carolina
- Dr. Robert L. Potts, President, University of North Alabama
- Dr. Richard F. Rosser, President of the Presidents' Group, Wisconsin

Members With Terms Expiring 9/30/02

- Mr. Gordon M. Ambach (Committee Vice Chairperson), Executive Director, Council of Chief State School Officers, Washington, DC
- Dr. Norman Francis, President, Xavier University of Louisiana
- Dr. George A. Pruitt, President, Thomas A. Edison State College, New Jersey
- Dr. Norma S. Rees, President, California State University, Hayward
- Honorable Thomas P. Salmon, Chair of the Board, Green Mountain Power Corporation, Vermont

Members With Terms Expiring 9/30/03

- Dr. Estela R. Lopez, Provost and Vice President for Academic Affairs, Northeastern Illinois University
- Eleanor P. Vreeland, Chairman, Barland Education Consultants, Florida
- Dr. John A. Yena, President, Johnson & Wales University, Rhode Island

How Do I Nominate an Individual for Appointment as a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

- A cover letter that provides your reason(s) for nominating the individual; and
- Contact information for the nominee (name, title, business address, and business phone and fax numbers) and a copy of the nominee's resume.

The information must be sent by June 29, 2001 to the following address: Bonnie LeBold, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 1990 K St. NW—Rm. 7007, Washington, DC 20006–7592.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Bonnie LeBold, the Committee's Executive Director, by phone at (202) 219–7009, by fax at (202) 219–7008, or by e-mail at *Bonnie.LeBold@ed.gov* between 9 a.m. and 5 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011c.

Dated: May 9, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 01–12169 Filed 5–14–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Wednesday, May 30, 2001; 6 p.m.–9 p.m.

ADDRESSES: Walatowa Visitors' Center, 7413 New Mexico State Highway 4, Jemez Pueblo, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989–1662; fax (505) 989–1752 or e-mail: *adubois@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Opening Activities—6–6:30 p.m.
2. Public Comments—6:30–7 p.m.
3. Reports
4. Committee Reports:
   Monitoring and Surveillance
   Waste Management
   Environmental Restoration
   Community Outreach
   Bylaws
   Budget
5. Other Board business will be conducted as necessary

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC on May 9, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–12186 Filed 5–14–01; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket Nos. FE C&E 01–59, C&E 01–60, C&E 01–61, C&E 01–62, C&E 01–63, and C&E 01–64]

Certification Notice—199; Notice of Filings of Coal Capability of Goldendale Energy, Inc., Channel Energy Center, L.P., Morgan Energy Center, LLC, Decatur Energy Center, LLC, Delta Energy Center, LLC, and Calpine Construction Finance Company, L.P.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Goldendale Energy, Inc., Channel Energy Center, L.P., Morgan Energy Center LLC, Decatur Energy Center, LLC, Delta Energy LLC, Calpine Construction Finance Company, L.P., and Ontario Power Generation, Inc. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in accordance with section 201(d).

Owner: Goldendale Energy, Inc. (C&E 01–59).
Operator: Goldendale Energy, Inc.
Location: Klickitat County, WA.
Plant Configuration: Combined-cycle.
Capacity: 244 MW.
Fuel: Natural gas.
Purchasing Entities: Various public and private utilities in the open market.
In-Service Date: July, 2002.

Owner: Channel Energy Center, L.P. (C&E 01–60).
Operator: Calpine Central, L.P.
Location: Houston, TX.
Plant Configuration: Combined-cycle.
Capacity: 537 MW.
Fuel: Natural gas.
Purchasing Entities: The region of the Electric Reliability Council of Texas.
In-Service Date: June, 2001.

Owner: Morgan Energy Center, LLC (C&E 01–61).
Operator: Calpine Central, L.P.
Location: Morgan County, AL.
Plant Configuration: Combined-cycle.
Capacity: 700 MW.
Fuel: Natural gas.
Purchasing Entities: 160 MW to Amoco Energy Trading Corp; 540 MW to Tennessee Valley Authority wholesale power market.
In-Service Date: Initial operation June 1, 2002; Full commercial operation January 1, 2003.

Owner: Decatur Energy Center, LLC (C&E 01–62).
Operator: Calpine Central, L.P.
Location: Morgan County, AL.
Plant Configuration: Combined-cycle.
Capacity: 700 MW.
Fuel: Natural gas.
Purchasing Entities: 140 to Solutia, Inc; 560 MW to Tennessee Valley Authority wholesale power market.
In-Service Date: June 1, 2002.

Owner: Delta Energy Center, LLC (C&E 01–63).
Operator: Delta Energy Center, LLC.
Location: Contra Costa County, CA.
Plant Configuration: Combined-cycle.
Capacity: 880 MW.
Fuel: Natural gas.
Purchasing Entities: Calpine Energy Services, L.P.
In-Service Date: April 2002.

Owner: Calpine Construction Finance Company, L.P. (CE 01–64).
Operator: Calpine Eastern Corporation.
Location: Tallapoosa County, AL.
Plant Configuration: Combined-cycle.

Capacity: 800 MW.

Fuel: Natural gas.

Purchasing Entities: Wholesale power market.

In-Service Date: April 2003.

Issued in Washington, DC, May 9, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–12187 Filed 5–14–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: June 11, 2001.

TIME: 9 a.m.–5 p.m.

ADDRESSES: Wyndham Hotel, 1400 M Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION: Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Subcommittee Recommendations to the Full Committee.
- Full Committee Recommendations on Technical Research and Development Priorities.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Douglas E. Kaempf at 202–586–7766 or *Bioenergy@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 9, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–12185 Filed 5–14–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation. Executive Order 13123, ''Greening the Government through Efficient Energy Management,'' authorized the FEMAC to provide public and private sector input to the Secretary of Energy on achieving new energy efficiency goals for Federal facilities. The U.S. Department of Energy's Office of Federal Energy Management Programs (FEMP) coordinates FEMAC activities.

DATES: Monday, June 4, 2001; 1:30 to 2:30 p.m. and 6 to 7:30 p.m.

ADDRESSES: Hyatt Regency Crown Center, 2345 McGee Street, Kansas City, Missouri 64108.

FOR FURTHER INFORMATION CONTACT: Steven Huff, Designated Federal Officer for the FEMAC, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507; *Steven.Huff@ee.doe.gov; http://www.eren.doe.gov/femp/aboutfemp/femac.html.*

SUPPLEMENTARY INFORMATION:

Purpose of meeting: This FEMAC meeting is an open forum for communicating with FEMAC members and Federal Energy Management Program officials. FEMAC committee members are Beth Shearer, FEMAC Chair, U.S. Department of Energy; Stuart Berjansky, Philips Lighting Company; Jared Blum, Polyisocyanurate Insulation Manufacturers Association; Kenneth Calvin, Mississippi Department of Economic and Community Development; Robert Collins, Tampa Electric Company/Peoples Gas Company; Richard Earl, PB Facilities, Inc; Shelley Fidler, Van Ness Feldman; Erbin Keith, Sempra Energy Solutions, LLC; Vivian Loftness, Carnegie Mellon University; Mary Palomino, Salt River Project; and Cynthia Vallina, Office of Management & Budget.

Tentative Agenda: Agenda will include an open discussion on the following topics:

Monday, June 4, 2001

- Federal energy management budget
- Energy-savings performance contracts
- Utility energy-efficiency service contracts
- Procurement of ENERGY STAR (Registered Trademark) and other energy efficient products
- Building design
- Process energy use
- Applications of efficient and renewable energy technologies (including clean energy technologies) at Federal facilities
- Other energy management issues and topics

FEMAC members also want to discuss in this discussion setting four critical issues:

- Improving the use of project financing (Energy Saving Performance Contacts and Utility Energy Service Contracts)
- Employing sustainable design in Federal facilities
- Examining budget issues and discussing priorities
- Incorporating the use of new and emerging technologies

Public Participation: For these discussion sessions, FEMAC invites

members of the public to help identify possible solutions in achieving the goals of reducing energy use and increasing energy efficiency in Federal facilities.

No advance registration is required for the meeting. Those wishing to address the committee will be heard based on a ''first-come, first-served'' sign-up list for each session. With the limited time available, the committee also encourages written recommendations, suggestions, position papers, etc., combined with a short oral summary statement.

Documents may be submitted either before or following the meeting. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 4, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–12184 Filed 5–14–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–260–000]

Columbia Gas Transmission Corporation; Notice of Application

May 9, 2001.

Take notice that on May 2, 2001, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP01–260–000, an application, pursuant to Sections 7 (b) and (c) of the Natural Gas Act and Part 157 of the Commission's Regulations for abandonment authorization and a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline, compression and appurtenant facilities in Delaware and Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the facilities in order to accommodate deliveries to a power plant being constructed by FPL Energy Marcus Hook L.P. (FPL) on the Delaware-Pennsylvania border. Specifically, Columbia proposes to construct 1.3 miles of 20-inch lateral pipeline in New Castle County, Delaware, and Delaware County, Pennsylvania. Columbia also proposes to construct and operate a 6,000 horsepower (hp) compressor unit at the existing Eagle Compressor Station in Chester County, Pennsylvania, a 6,000 hp compressor unit at the existing Downingtown Compressor Station in Chester County, Pennsylvania, and a new measuring and regulating (M&R) station on the power plant property in Delaware County, Pennsylvania. In addition, Columbia proposes to abandon 2 1,250 hp compressor units at the Downingtown Compressor Station. It is stated that Columbia is abandoning these units because of their age and condition and will no longer need these units when the new units are installed. In related construction under the automatic provisions of its blanket certificate authorization, Columbia proposes to install a new tap and valve at an existing M&R station at the intersection of Columbia's facilities with those of Transcontinental Gas Pipe Line Corporation in Chester County, Pennsylvania, and to replace existing regulators at an interconnection with the facilities of Texas Eastern Transmission Corporation, also in Chester County. Columbia proposes to provide firm transportation service for FPL, delivering 125,000 Dekatherms (dth) of natural gas per day to FPL's plant. Columbia estimates the total cost of the proposed facilities at $22.3 million.

Any questions regarding this application should be directed to M.D. Mamone, Certificates, at (304) 357–3164, Columbia Gas Transmission Company, P.O. Box 1273, Charleston, West Virginia 25325–1273.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 30, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. 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 Commission's website at—*http://www.ferc.fed.us/efi/doorbell.htm.*

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a

final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–12149 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1965–000]

Commonwealth Edison Company; Notice of Filing

May 9, 2001.

Take notice that on May 3, 2001, Commonwealth Edison Company (ComEd), filed a request, consistent with last year's authorization (*Notice of Interim Procedures to Support Industry Reliability Efforts*, 91 FERC ¶61,189 (2000)), to purchase power using a streamlined regulatory process from entities with small amounts of electric wholesale sales. ComEd requests authorization for the use of the streamlined regulatory procedures for the period from June 1, 2001 to September 30, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 22, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, 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. 01–12183 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1329–000]

Idaho Power Company and IDACORP Energy Solutions, LP; Notice of Issuance of Order

May 9, 2001.

Idaho Power Company and IDACORP Energy Solutions, LP (hereafter, ''the Applicants'') filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On April 27, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceeding.

The Commission's April 27, 2000 Order granted the Applicants request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 29, 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. 01–12147 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1381–000]

Caledonia Generating, L.L.C.; Notice of Issuance of Order

May 9, 2001.

Caledonia Generating, L.L.C. (Caledonia) submitted for filing a rate schedule under which Caledonia will engage in wholesale electric power and energy transactions at market-based rates. Caledonia also requested waiver of various Commission regulations. In particular, Caledonia requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Caledonia.

On April 27, 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 of 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 Caledonia 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, Caledonia 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 Caledonia'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 May 29, 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. 01–12148 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1394–000, *et al.*]

Enron Energy Services, Inc., *et al.*; Notice of issuance of Order

May 9, 2001.

Enron Energy Services, Inc., *et al.* (Enron Energy) submitted for filing a rate schedule under which Enron Energy will engage in wholesale electric power and energy transactions at market-based rates. Enron Energy also requested waiver of various Commission regulations. In particular, Enron Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Enron Energy.

On April 27, 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 Enron Energy 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, Enron Energy 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 Enron Energy'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 May 29, 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 385.200(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. 01–12146 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–95–000–000, *et al*]

Merchant Energy Group of the Americas, Inc., *et al.* Electric Rate and Corporate Regulation Filings 2001.

Take notice that the following filings have been made with the Commission:

1. Merchant Energy Group of the Americas, Inc.

[Docket No. EC01–95–000]

Take notice that on May 2, 2001, Merchant Energy Group of the Americas, Inc. (MEGA) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby MEGA will assign the right, title, obligation, and interest in and to certain wholesale power sales contracts to Morgan Stanley Capital Group, Inc. (Morgan Stanley) through an Assignment Agreement. MEGA requests confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations, for the written instruments associated with the proposed disposition.

Comment date: May 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. San Manuel Power Co. LLC

[Docket No. EG01–204–000]

Take notice that on May 4, 2001, San Manuel Power Co. LLC (Applicant), with its principal office at 7400 N. Oracle Rd., Suite 131, Tucson, Arizona, 85704, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a limited liability company that will operate a 37-MW generating plant near San Manuel, Arizona.

Comment date: May 30, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. E. F. Oxnard, Inc.

[Docket No. EG01–205–000]

Take notice that on May 7, 2001, E. F. Oxnard, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission), an

application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant owns and operates an approximately 48 megawatt topping cycle qualifying cogeneration facility. The applicant seeks a determination of its exempt wholesale generator status. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: May 30, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Southern Company Services, Inc.

[Docket No. ER01–1698–001]

Take notice that on May 2, 2001, Southern Company Services, Inc. as agent for Savannah Electric and Power Company (Savannah Electric), tendered for filing a reformatted Exhibit C to the unexecuted Interconnection Agreement between Savannah Electric and Effingham County Power, LLC (Effingham) (the Agreement), as a service agreement under Southern Operating Companies Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as service agreement number 375. In addition, on April 30, 2001, Savannah Electric filed a Service Agreement designation sheet. These are a correction and omission to the filing tendered on April 2, 2001, respectively, and nothing in the Agreement or Exhibit C have been changed.

Comment date: May 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER01–1902–001]

Take notice that on May 2, 2001, Southern Company Services, Inc. as agent for Georgia Power Company (Georgia Power), tendered for filing an executed Interconnection Agreement between Georgia Power and Augusta Energy LLC (Augusta Energy) (the Agreement), as a service agreement under Southern Operating Companies Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5), and a correctly formatted Exhibit C. The executed Agreement and correctly formatted Exhibit C are corrections to the filing tendered on April 27, 2001, and nothing in the Agreement or Exhibit C have been changed.

Comment date: May 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER01–1961–000]

Take notice that on May 4, 2001, Florida Power & Light Company (FPL) tendered for filing an executed Service Agreement for service pursuant to FPL's Cost Based Rates Tariff for Kissimmee Utility Authority. FPL requests that the Service Agreement be made effective on April 13, 2001.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power, Inc.

[Docket No. ER01–1962–000]

Take notice that on May 4, 2001, Minnesota Power, Inc. and Superior Water, Light and Power tendered for filing signed Service Agreements for Non-Firm and Short-Term Point-to-Point Transmission Service with El Paso Merchant Energy, L.P. under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER01–1963–000]

Take notice that on May 4, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing Notices of Termination of Service Agreements with Citizens Power Sales for Firm and Non-Firm Point-To-Point Transmission Service designated respectively as First Revised Service Agreement Nos. 119 and 169 under FERC Electric Tariff, Second Revised Volume No. 5. Dominion Virginia Power also respectfully requests an effective date of the termination of the Service Agreement of July 3, 2001, which is sixty (60) days from the date of filing of the Letter of Termination.

Copies of the filing were served upon Edison Mission Marketing & Trading, Inc. (merged entity replacing Citizens Power Sales), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Elwood Energy LLC

[Docket No. ER01–1975–000]

Take notice that on May 4, 2001, Elwood Energy LLC tendered for filing a second amended and restated service agreement for sales of energy and capacity to Exelon Generating Company, LLC.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER01–1973–000]

Take notice that on May 4, 2001, Central Power and Light Company (CPL) tendered for filing an interconnection agreement (Agreement) between CPL and the City of Brownsville, Texas (Brownsville). CPL states that the Agreement will supersede two bilateral CPL-Brownsville interconnection agreements currently on file with the Commission. CPL also filed Notices of Cancellation of those agreements. Additionally, CPL and West Texas Utilities Company (WTU) filed to cancel two transmission service agreements with Brownsville which have also been superseded.

CPL seeks an effective date of April 4, 2001 for the Agreement. CPL and WTU seek an effective date of April 4, 2001 for their respective Notices of Cancellation. Accordingly CPL and WTU request waiver of the Commission's notice requirements. Copies of the filing have been served on Brownsville and on the Public Utility Commission of Texas.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER01–1974–000]

Take notice that on May 4, 2001, the California Independent System Operator Corporation (ISO) tendered for filing for informational purposes a Termination and Release Agreement (Termination Agreement) between the ISO and Alliance Power Inc. (Alliance). Alliance is a non-jurisdictional generating facility that had entered into Summer Reliability Agreements (SRAs) with the ISO to provide new generation to the ISO for reliability purposes during summer periods. The Termination Agreement terminates those SRAs and releases the ISO and Alliance from all rights and obligations related to the SRAs. The Termination Agreement was executed on April 13, 2001, and will become effective simultaneously with the execution and delivery of a new Power Purchase Agreement between the California Department of Water Resources and Alliance.

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: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Gray County Wind Energy, LLC

[Docket No. ER01–1972–000]

Take notice that on May 4, 2001, Gray County Wind Energy, LLC (Gray County), tendered for filing an application for authorization to sell capacity, energy and ancillary services at market-based rates pursuant to Section 205 of the Federal Power Act.

Gray County also requests that the Commission accept for filing two long-term power purchase agreements for the sale of power from Gray County to UtiliCorp United Inc. as service agreements under Gray County's proposed market-based rate tariff.

Comment date: May 25, 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. 01–12182 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1558–000]

NEO California Power LLC; Notice of Issuance of Order

May 9, 2001.

NEO California Power LLC (NEO) submitted for filing a rate schedule under which NEO will engage in wholesale electric power and energy transactions at market-based rates. NEO also requested waiver of various Commission regulations. In particular, NEO requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NEO.

On April 27, 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 NEO 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, NEO 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 NEO'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 May 29, 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. 01–12145 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–32–000, *et al.*]

North West Rural Electric Cooperative, *et al.*; Electric Rate and Corporate Regulation Filings

May 8, 2001.

Take notice that the following filings have been made with the Commission:

1. North West Rural Electric Cooperative

[Docket No. ES01–32–000]

Take notice that on April 30, 2001, North West Rural Electric Cooperative (North West) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings in an amount not to exceed $13,500,000 under a revolving line of credit agreement with the National Rural Utilities Cooperative Finance Corporation.

North West also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Service Corporation on behalf on Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny)

[Docket No. ER01–1223–001]

Take notice that on May 3, 2001, Allegheny Energy Service Corporation on behalf on Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing Revisions to its Open Access Transmission Tariff in compliance with the Commission's Order of April 12, 2001 at Docket No. ER01–1223–000, 95 FERC 61,045.

Copies of the filing have been provided to jurisdictional customers the

Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Capital & Trading, Inc.

[Docket No. ER01–1337–002]

Take notice that on May 3, 2001, Cinergy Capital & Trading, Inc. tendered for filing a compliance filing to its notice of change in status to reflect its pending acquisition of Brownsville Power I, L.L.C. and Caledonia Power I, L.L.C., and amendments to its market-based rate tariff and code of conduct.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER01–1820–001]

Take notice that on May 3, 2001, Cinergy Services, Inc. (Cinergy Services), on behalf of The Cincinnati Gas & Electric Co. (CG&E) and PSI Energy, Inc. (PSI) (together, the Operating Companies) tendered for filing an errata filing to its April 18, 2001 short-form market-based rate tariff (Proposed MR Tariff) filing. The proposed market based rate tariff does not replace Cinergy Services's existing market-based rate tariff, FERC Electric Tariff, Original Volume No. 7. Cinergy Services requests waiver of the Commission's notice of filing requirements to allow the proposed tariff to become effective on April 19, 2001, the day after filing.

Cinergy Services has served this filing upon the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, and the Public Utilities Commission of Ohio.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corporation

[Docket No. ER01–1950–000]

Take notice that on May 3, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing a fully executed service agreement (Service Agreement) between NYSEG and UGI Utilities, Inc. (UGI) pursuant to Section 35.13 of the Commission's Regulations, 18 C.F.R. § 35.13 (1998). Under the Service Agreement, NYSEG may provide capacity and/or energy to UGI in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested that the Commission accept the fully executed Service Agreement and that the Service Agreement become effective as of May 4, 2001. NYSEG has served a copy of this filing upon the New York State Public Service Commission and UGI.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER01–1951–000]

Take notice that on May 3, 2001, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 2001 annual rate redetermination update (Update) in accordance with the Open Access Transmission Tariff filed in compliance with FERC Order No. 888 in Docket No. OA96–158–000.

Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny)

[Docket No. ER01–1952–000]

Take notice that on May 3, 2001, Allegheny Energy Service Corporation on behalf on Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing Second Revised Sheet No. 115 to its Open Access Transmission Tariff to offer Next Hour Market Service. Third Revised Sheet Nos. 193 through 214 and Second Revised Sheet Nos. 215 through 223 to include the latest Transmission Loading Relief Procedures adopted by the North American Electric Reliability Council, and Fourth Revised Sheet No. 173, Third Revised Sheet No. 175B and Original Sheet No. 190D to update the list of Customers detailed within Attachments E and I.

Copies of the filing have been provided to jurisdictional customers and to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER01–1954–000]

Take notice that on May 3, 2001, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and POSDEF Power Company, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on POSDEF Power Company, L.P. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective April 25, 2001.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Corporation Operator

[Docket No. ER01–1955–000]

Take notice that on May 3, 2001, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and POSDEF Power Company, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on POSDEF Power Company, L.P. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective April 25, 2001.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER01–1956–000]

Take notice that on May 3, 2001, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and POSDEF Power Company, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on POSDEF Power Company, L.P. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective April 25, 2001.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator

[Docket No. ER01–1957–000]

Take notice that on May 3, 2001, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Tucson Electric Power Company for acceptance by the Commission.

The ISO states that this filing has been served on Tucson Electric Power Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of April 16, 2001.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Great Bay Power Corporation

[Docket No. ER01–1960–000]

Take notice that on May 3, 2001, Great Bay Power Corporation (Great Bay) tendered for filing a service agreement between Burlington Electric Department and Great Bay for service under Great Bay's revised Market-Based Rate Power Sales Tariff Volume No. 2 (Tariff). This Tariff was accepted for filing by the Commission on May 31, 2000, in Docket No. ER00–2211–000. The service agreement is proposed to be effective April 1, 2001.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Gauley River Power Partners, L.P.

[Docket No. ER01–1964–000]

Take notice that on May 3, 2001, Gauley River Power Partners, L.P. (GRPP) tendered for filing for acceptance of GRPP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER01–1965–000]

Take notice that on May 3, 2001, Commonwealth Edison Company (ComEd), tendered for filing a request, consistent with last year's authorization (Notice of Interim Procedures to Support Industry Reliability Efforts, 91 FERC ¶61,189 (2000)), to purchase power using a streamlined regulatory process from entities with small amounts of electric energy to sell that become public utilities under the Federal Power Act when they make electric wholesale sales.

ComEd requests authorization for the use of the streamlined regulatory procedures for the period from June 1, 2001 to September 30, 2001.

Comment date: May 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Cleco Evangeline LLC

[Docket No. ER01–1971–000]

Take notice that on May 1, 2001, Cleco Evangeline LLC (Cleco Evangeline), tendered for filing proposed changes in its Rate Schedule FERC No. 1. The proposed changes would allow Cleco Evangeline to make wholesale sales under FERC Rate Schedules No.1 to any affiliate that is not a franchised utility. The rate schedule designations have been amended to comply with the Federal Energy Regulatory Commission's (Commission) Order 614.

The request to amend Cleco Evangeline's Rate Schedule FERC No. 1 is made pursuant to Commission's precedent established in DTE Edison America, Inc., 84 FERC ¶61,197 (1998), PG&E Corporation and Valero Energy Corporation, 80 FERC ¶61,041 (1997), and USGen Power Services, L.P., 73 FERC ¶61, 302 (1995), whereby, power marketers were permitted to make sales under their market based rates tariff to any affiliate that is not a franchised utility.

Comment date: May 24, 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. 01–12144 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 18–063]

Idaho Power Company; Notice of Availability of Environmental Assessment

May 9, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects has reviewed Idaho Power Company's application for license amendment to waive for 1 year the aesthetic flow requirements at the Twin Falls Hydroelectric Project, located on the Snake River in Twin Falls and Jerome Counties, Idaho, and has prepared an Environmental Assessment (EA). The project includes about 93 acres of federal land administered by the Bureau of Land Management.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that approval of the proposed amendment with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on May 8, 2001 for the above application. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. the EA may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

For further information, contact John Smith at (202) 219–2460.

David P. Boergers,

Secretary.

[FR Doc. 01–12150 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2899–099 Idaho]

Idaho Power Company; Notice of Availability of Environmental Assessment

May 9, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects has reviewed Idaho Power Company's application for license amendment to waive for 1 year the target flow requirements at the Milner Hydroelectric project, located on the Snake River in Twin Falls and Cassia Counties, Idaho, and has prepared an environmental assessment (EA). The project includes about 109 acres of federal land administered by the Bureau of Land Management.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that the approval of the proposed amendment with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on May 8, 2001, for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the EA can also be obtained through the Commission's homepage at *http://www.ferc.fed.us*.

For further information, contact Kenneth Hogan at (202) 208–0434.

David P. Boergers,

Secretary.

[FR Doc. 01–12151 Filed 5–14–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–9]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree which was lodged with the United States District Court for the Northern District of California by the United States Environmental Protection Agency (''EPA'') on April 16, 2001 to address a lawsuit filed by Our Children's Earth Foundation. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses EPA's alleged failure to publish a comprehensive document for each State in EPA Region 9, setting forth all requirements of each such State's applicable State Implementation Plan under section 110(h) of the Act, 42 U.S.C. 7410(h). *Our Children's Earth Foundation* v. *EPA,* Civil No. C–01–1475 EDL (N.D. Cal.).

DATES: Written comments on the proposed consent decree must be received by June 14, 2001.

ADDRESSES: Written comments should be sent to Jeff Wehling, Office of Regional Counsel, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the proposed consent decree are available from Janet Taber, (415) 744–1341.

SUPPLEMENTARY INFORMATION: The Clean Air Act requires EPA to assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State. See section 110(h), 42 U.S.C. 7410(h). Such an applicable plan is referred to as a State implementation plan or ''SIP.'' Under the proposed consent decree, EPA shall make available to the general public on the Region 9 website (*i.e.,* make ''web accessible'') certain information concerning the SIPs. This information shall include a log of current EPA-approved SIP rules for each local air quality management district or air pollution control district within Region 9 (referred to as ''District'') showing approval dates and **Federal Register** citations and a copy of the rules themselves. In addition, EPA shall make web accessible summaries of the SIP commitments made by each District in local plans developed under part D of Title I of the Act, as amended in 1990. These plan summaries shall identify each control measure approved by EPA for adoption and implementation by the District, the emissions reductions to which the District has committed, the schedule of adoption and implementation dates to which the District has committed, and any rule number for the SIP rule adopted by the District relating to the control measure. The proposed consent decree provides for a series of deadlines for making these SIP requirements web accessible with the last such deadline occurring on March 31, 2002.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final consent decree will then be executed by the parties.

Dated: April 24, 2001.

Anna L. Wolgast,

Acting General Counsel.

[FR Doc. 01–12208 Filed 5–14–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1367–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1367–DR), dated May 2, 2001, and related determinations.

EFFECTIVE DATE: May 2, 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 May 2, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms, tornadoes, and flooding beginning on April 8, 2001, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Iowa.

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 Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

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 Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Allamakee, Buchanan, Clayton, Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, Ringgold, Scott, and Wapello Counties for Individual Assistance.

Clayton, Jackson, Lee, Louisa, Ringgold, and Scott Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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. 01–12159 Filed 5–14–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1366–DR]

Kansas; 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 Kansas (FEMA–1366–DR), dated April 27, 2001, and related determinations.

EFFECTIVE DATE: May 1, 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 May 1, 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. 01–12158 Filed 5–14–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

In notice document 00–32911, beginning on page 81864, in the issue of Wednesday, December 27, 2000, the Federal Reserve discussed revisions to its structure reporting requirements for both domestic and foreign banking organizations. This notice listed the implementation date for the new event-generated structure reports, the Report of Changes in Organizational Structure and the Report of Changes in FBO Organizational Structure (FR Y–10 and FR Y–10F; OMB No. 7100–0297), as June 1, 2001. The Federal Reserve has postponed the implementation date for these new forms to September 1, 2001, to allow institutions more time to prepare their systems for these reporting changes. For all event-generated structure reports filed prior to September 1, 2001, institutions should continue using the Changes in Investments and Activities of Top-Tier Financial Holding Companies, Bank Holding Companies, and State Member Banks (FR Y–6A; OMB No. 7100–0124) and the Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities (FR Y–7A; OMB No. 7100–0125). For reports that represent transactions occurring prior to September 1 and that are filed after September 1, institutions may use either the current or the new forms. For reports representing transactions that occur after September 1, institutions must use the new FR Y–10 and FR Y–10F reporting forms.

The Federal Reserve has also postponed the discontinuance of the Changes in Foreign Investments Made Pursuant to Regulation K (FR 2064; OMB No. 7100–0109) until September 1, 2001. The implementation date for revisions to the Annual Report of Bank Holding Companies (FR Y–6; OMB No. 7100–0124) and the Annual Report of Foreign Banking Organizations (FR Y–7; OMB No. 7100–0125) remains December 31, 2001.

In addition, the Federal Reserve will offer a new Internet-based tool to facilitate filing the FR Y–10 and FR Y–10F. This Internet-based tool will be available on September 1 for the FR Y–10 and in early 2002 for the FR Y–10F. Institutions will receive detailed information about this new online tool from their Reserve Banks closer to the implementation date.

The Federal Reserve will post the new FR Y–10 and FR Y–10F forms on the Board's public web site during the week of May 14, 2001, at *http://www.federalreserve.gov/* under the section for Reporting Forms and then under Information collections under review. The FR Y–6 and FR Y–7 forms will be posted on this site later this year.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Board of Governors of the Federal Reserve System, May 9, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–12168 Filed 5–14–01; 8:45 am]

BILLING CODE 6210–01–P

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 June 8, 2001.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Chester Valley Bancorp, Inc., Downingtown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First Financial Savings Assocoation, Downingtown, Pennsylvania.

2. Franklin Financial Services Corporation, Chambersburg, Pennsylvania; to acquire 15.8 percent of the voting shares of American Home Bank, National Association, Lancaster, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. Hancock Holding Company, Gulfport, Mississippi; to merge with Lamar Capital Corporation, Purvis, Mississippi, and thereby indirectly acquire voting shares of Lamar Bank, Purvis, Mississippi.

Board of Governors of the Federal Reserve System, May 9, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–12167 Filed 5–14–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, May 21, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 11, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–12316 Filed 5–11–01; 12:27 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9 a.m. to 5 p.m., May 31, 2001; 9 a.m. to 2 p.m., June 1, 2001.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: At this hearing, the subcommittee will hear testimony regarding the process and outcomes for assessing requests for changes to the transaction standards designated under HIPAA, as well as assess industry progress in identifying a consensus standard for electronic signatures.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: May 7, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–12211 Filed 5–14–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Reports and Guidance Documents; Availability, etc.: Ethical and Policy Issues in International Research; Clinical Trials in Developing Countries

SUMMARY: Notice of Publication of the Executive Summary of the report, ''Ethical and Policy Issues in International Research: Clinical Trials in Developing Countries'', by the National Bioethics Advisory Commission (NBAC)

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The functions of NBAC are as follows:

(a) Provide advice and make recommendations to the National Science and Technology Council and to other appropriate government entities regarding the following matters:

(1) The appropriateness of departmental, agency or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior; and

(2) applications, including the clinical applications, of that research.

(b) Identify broad principles to govern the ethical conduct of research, citing specific projects only as illustrations for such principles.

(c) Shall not be responsible for the review and approval of specific projects.

(d) In addition to responding to requests for advice and recommendations from the National Science and Technology Council, NBAC also may accept suggestions of issues for consideration from both the Congress and the public. NBAC may also identify other bioethical issues for the purpose of providing advice and recommendations, subject to the approval of the National Science and Technology Council. The members of NBAC are as follows:

Harold T. Shapiro, Ph.D., Chair
Patricia Backlar
Arturo Brito, M.D.
Alexander Morgan Capron, LL.B.
Eric J. Cassell, M.D., M.A.C.P.
R. Alta Charo, J.D.
James F. Childress, Ph.D.
David R. Cox, M.D., Ph.D.
Rhetaugh G. Dumas, Ph.D., R.N.
Laurie M. Flynn
Carol W. Greider, Ph.D.
Steven H. Holtzman
Bernard Lo, M.D.
Lawrence H. Miike, M.D., J.D.
Thomas H. Murray, Ph.D.
William C. Oldaker, LL.B.
Diane Scott-Jones, Ph.D.

Ethical and Policy Issues in International Research: Clinical Trials in Developing Countries; Executive Summary

Introduction

In recent years, the increasingly global nature of health research, and in particular the conduct of clinical trials involving human participants (1), has highlighted a number of ethical issues, especially in those situations in which researchers or research sponsors from one country wish to conduct research in another country. The studies in question might simply be one way of helping the host country address a public health problem, or they might reflect a research sponsor's assessment that the foreign location is a more convenient, efficient, or less troublesome site for conducting a particular clinical trial. They might also represent a joint effort to address an important health concern faced by both parties.

As the pace and scope of international collaborative biomedical research have increased during the past decade, long-standing questions about the ethics of designing, conducting, and following up on international clinical trials have reemerged. Some of these issues have begun to take center stage because of the concern that research conducted by scientists from more prosperous countries in poorer nations that are more heavily burdened by disease may, at times, be seen as imposing ethically inappropriate burdens on the host country and on those who participate in the research trials. The potential for such exploitation is cause for a concerted effort to ensure that protections are in place for all persons who participate in international clinical trials.

As with other National Bioethics Advisory Commission (NBAC) reports, several issues and activities prompted the Commission's decision to address this topic. First, several members of the public suggested that NBAC's mandate to examine the protection of the rights and welfare of human participants in research extends to international research conducted or sponsored by U.S. interests. In this respect, one particular dimension of research conducted internationally has attracted a great deal of attention, namely whether the existing rules and regulations that normally govern the conduct of U.S. investigators or others subject to U.S. regulations remain appropriate in the context of international research, or whether they unnecessarily complicate or frustrate otherwise worthy and ethically sound research projects.

A second circumstance—the changing landscape of international research—also is relevant. Increasingly, scientists from developing countries are becoming more involved as collaborators in research, as many of the countries from which these investigators come have developed their capacity for technical contributions to research projects and for appropriate ethical review of research protocols. Although the source of funding for such collaborative research is likely to continue to be the wealthier, developed countries, collaborators from developing countries are seeking—justifiably—to become fuller and more equal partners in the research enterprise. Finally, the current landscape of international research also reflects the growing importance of clinical trials conducted by pharmaceutical, biotechnology, and medical device companies. Some observers believe that market forces have pressured private companies to become more efficient in the conduct of research, which may—absent vigilance—compromise the protection of research participants. Although the extent, relevance, and force of these pressures are widely debated, it is clear that such pressures can exist regardless of the funding source.

Scope of This Report

This report discusses the ethical issues that arise when research that is subject to U.S. regulation is sponsored or conducted in developing countries, where local technical skills and other key resources are in relatively scarce supply. Within this context, the Commission's attention was focused on the conduct of clinical trials involving competent adults, in particular those trials—such as Phase III drug studies—that can lead to the development of effective new treatments. Complex and important ethical concerns are likely to be more pressing in clinical trials than in many other types of research investigations; thus, the focus of this report has been limited accordingly. Although much of the discussion in this report is relevant to other types of research, the particular characteristics of research endeavors other than clinical trials probably merit their own ethical assessment.

This report centers on the principal ethical requirements surrounding the conduct of clinical trials conducted by U.S. interests abroad, and in particular the need for such trials to be directly relevant to the health needs of the host country. Other major topics addressed include ethical issues surrounding the choice of research designs, especially in situations where a placebo control is proposed when an established effective treatment is known to exist; issues arising in the informed consent process in cultures whose norms of behavior differ from those in the United States; what benefits should be provided to research participants and by whom after their participation in a trial has ended; and what benefits, if any, should be made available to others in the host community or country. Finally, it makes recommendations about the need for developed countries to assist developing countries in building the capacity to become fuller partners in international research. Until this goal can be met, however, recommendations are made regarding how the United States should

proceed in settings in which systems for protecting human participants equivalent to those of the United States have not yet been established.

Essential Requirements for the Ethical Conduct of Clinical Trials

Many of the ethical concerns regarding the treatment of human participants in international research are similar to those raised in conjunction with research conducted in the United States (2). They include, among others, choosing the appropriate research question and design; ensuring prior scientific and ethical review of the proposed protocol; selecting participants equitably; obtaining voluntary informed consent; and providing appropriate treatment to participants during and after the trial. These concerns are consistent with principles endorsed in many international research ethics documents.

NBAC believes that two types of ethical requirements—substantive and procedural—must be carefully considered and distinguished when human research is conducted, regardless of the location. The principles embodied in the ''Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research'' serve as a foundation for the substantive ethical requirements incorporated into the system of protection of human participants in the United States. The ''Belmont Report'' sets forth three basic ethical principles, which provide an analytical framework for understanding many of the ethical issues arising from research involving human participants: respect for persons, beneficence, and justice. NBAC believes that in order to be ethically sound, research conducted with human beings must, at a minimum, be consistent with the ethical principles underlying the ''Belmont Report''. In addition, ethically sound research must satisfy a number of important procedural requirements, including prior ethical review by a body that is competent to assess compliance with these substantive ethical principles. U.S. research regulations also set forth more specific rules to guide ethics review committees (3) (and researchers) in their work. NBAC believes that when conducting clinical trials abroad, U.S. researchers and sponsors should comply with these substantive ethical requirements for the protection of human research participants.

Recommendation 1.1 lists protections that should be provided for individuals participating in U.S. government-sponsored clinical trials, whether conducted domestically or abroad (4). Although existing U.S. law and regulations impose limits on the extent to which non-federally funded research is subject to oversight, the Commission believes that these requirements should extend to all clinical trials, regardless of who sponsors or conducts them.

Recommendation 1.1

The U.S. government should not sponsor or conduct clinical trials that do not, at a minimum, provide the following ethical protections:

(a) prior review of research by an ethics review committee(s);

(b) minimization of risk to research participants;

(c) risks of harm that are reasonable in relation to potential benefits;

(d) adequate care of and compensation to participants for injuries directly sustained during research;

(e) individual informed consent from all competent adult participants in research;

(f) equal regard for all participants; and

(g) equitable distribution of the burdens and benefits of research.

Recommendation 1.2

The Food and Drug Administration should not accept data obtained from clinical trials that do not provide the substantive ethical protections outlined in Recommendation 1.1.

Responsiveness of the Research to the Health Needs of the Population

Sponsoring or conducting research in developing countries often poses special challenges arising from the combined effects of distinctive histories, cultures, politics, judicial systems, and economic situations. In addition, in countries in which extreme poverty afflicts so many, primary health care services generally are inadequate, and a majority of the population is unable to gain access to the most basic and essential health products and services. As a result of these difficult conditions, the people in these countries are often more vulnerable in situations (such as clinical trials) in which the promise of better health seems to be within reach.

Whether the research sponsor is the U.S. government or a private sector organization, some justification is needed for conducting research abroad other than a less stringent or troublesome set of regulatory or ethical requirements. Moreover, when the United States (or any developed country) proposes to sponsor or conduct research in another country when the same research could not be conducted ethically in the sponsoring country, the ethical concerns are more profound, and the research accordingly requires a more rigorous justification.

To meet the ethical principle of beneficence, the risks involved in any research with human beings must be reasonable in relation to the potential benefits. Plainly, the central focus of any assessment of risk is the potential harm to research participants themselves (in terms of probability and magnitude), although risks to others also are relevant. The potential benefits that are weighed against such risks may include those that will flow to the fund of human knowledge as well as to those now and in the future whose lives may be improved because of the research. In addition, some of the benefits must also accrue to the group from which the research participants are selected. NBAC understands the principle of justice to require that a population, especially a vulnerable one, should not be the focus of research unless some of the potential benefits of the research will accrue to that group after the trial. Thus, in the context of international research—and particularly when the population of a developing country has been sought as a source of research participants—U.S. and international research ethics require not merely that research risks are reasonable in relation to potential benefits, but also that they respond to the health needs of the population being studied. This is because, according to the principles of beneficence and justice, only research that is responsive to these needs can offer relevant benefits to the population.

Recommendation 1.3

Clinical trials conducted in developing countries should be limited to those studies that are responsive to the health needs of the host country.

Choosing a Research Design and the Relevance of Routine Care

Making a determination about the appropriate design for a clinical trial depends on various contextual considerations, so that what might be an ethically acceptable design in one situation could be problematic in another. For example, it might be unethical to conduct a clinical trial for a health condition in a country in which that condition is unlikely to be found. In comparison, the same trial might be quite appropriately conducted where the trial results could be important to the local population. A more challenging question is whether a research design that could not be ethically implemented in the sponsoring country can be ethically justified in a host country when the health problem

being addressed is common to both nations.

In this report, NBAC is especially interested in exploring the following question: Can a research design that could not be ethically implemented in the sponsoring, developed country be ethically justified in the country in which the research is conducted? In all cases, there is an ethical requirement to choose a design that minimizes the risk of harm to human participants in clinical trials and that does not exploit them. Because the choice of a study design for any particular trial will depend on these and other factors, it would be inappropriate—indeed wrong—to prescribe any particular study design as ethical for all research situations. Nevertheless, under certain, specified conditions, one or another design can be held to be ethically preferable.

Recommendation 2.1

Researchers should provide ethics review committees with a thorough justification of the research design to be used, including the procedures to be used to minimize risks to participants.

Providing Established Effective Treatment as the Control

From the perspective of the protection of human participants in research, one of the most critical issues in clinical trial design concerns the use and treatment of control groups, which often are an essential component in methodologies used to guard against bias. Although placebos are a frequently used control for clinical trials, it is increasingly commonplace to compare an experimental intervention to an existing established effective treatment. These types of studies are called active-control (or positive control) studies, which are often extremely useful in cases in which it would not be ethical to give participants a placebo because doing so would pose undue risk to their health or well-being.

Within the context of active treatment concurrent controls, it is useful to consider whether, and if so under what circumstances, researchers and sponsors have an obligation to provide an established effective treatment to the control group even if it is not available in the host country. This report adopts the phrase an established effective treatment to refer to a treatment that is established (it has achieved widespread acceptance by the global medical profession) and effective (it is as successful as any in treating the disease or condition). It does not mean that the treatment is currently available in that country.

Investigators must carefully explain and ethics review committees must cautiously scrutinize the justification for the selection of the research design, including the level of care provided to the control group. If in a proposed clinical trial the control group will receive less care than would be available under ideal circumstances, the burden on the investigator to justify the design should be heavier. Furthermore, representatives of the host country, including scientists, public officials, and persons with the condition under study, should have a strong voice in determining whether a proposed trial is appropriate.

Recommendation 2.2

Researchers and sponsors should design clinical trials that provide members of any control group with an established effective treatment, whether or not such treatment is available in the host country. Any study that would not provide the control group with an established effective treatment should include a justification for using an alternative design. Ethics review committees must assess the justification provided, including the risks to participants, and the overall ethical acceptability of the research design.

Community Involvement in Research Design and Implementation

Over the past three decades, researchers increasingly have deliberately involved communities in the design of research. In addition, research participants, health advocates, and other members of the communities from which participants are recruited have requested, and in some cases demanded, involvement in the design of clinical trials. By consulting with the community, researchers often gain insight about whether the research question is relevant and responsive to health needs of the community involved.

In addition, community consultation can improve the informed consent process and resolve problems that arise in this process because of the use of difficult or unfamiliar concepts. Such discussions can provide insight into whether the balance of benefits and harms in the study is considered acceptable and whether the interventions and follow-up procedures are satisfactory. Community consultation is particularly important when the researcher does not share the culture or customs of the population from which research participants will be recruited.

Recommendation 2.3

Researchers and sponsors should involve representatives of the community of potential participants throughout the design and implementation of research projects. Researchers should describe in their proposed protocol how this will be done, and ethics review committees should review the appropriateness of this process. When community representatives will not be involved, the protocol presented to the ethics committee should justify why such involvement was not possible or relevant.

Fair and Respectful Treatment of Participants

The requirement to obtain voluntary informed consent from human participants before they are enrolled in research is a fundamental tenet of research ethics. It was the first requirement proclaimed in the Nuremberg Code in 1947, and it has appeared in all subsequent published national and international codes, regulations, and guidelines pertaining to research ethics, including those in many developing countries.

Nevertheless, discussion is ongoing about the value and importance of particular procedural approaches to informed consent in other countries. Problems involving the interpretation and application of the requirement to obtain voluntary informed consent—and its underlying ethical principles—arise for researchers, ethics review committees, and others. In some countries, the methods used in U.S.-based studies for identifying appropriate groups for study, enrolling individuals from those groups in a protocol, and obtaining informed voluntary consent might not succeed because of different cultural or social norms. Meeting the challenge of developing alternative methodologies requires careful attention to the ethical issues involved in recruiting research participants and obtaining their consent, which is necessary in order to ensure justice in the conduct of research and to avoid the risk of exploitation.

Recommendation 3.1

Research should not deviate from the substantive ethical standard of voluntary informed consent. Researchers should not propose, sponsors should not support, and ethics review committees should not approve research that deviates from this substantive ethical standard.

Disclosure Requirements

The basic disclosure requirements for satisfying the informed consent provisions in U.S. research regulations focus on the information needed by a potential participant in order to decide whether or not to participate in a study. Requirements for disclosure of information in the research setting usually exceed those for disclosure in clinical contexts. Indeed, the extent of disclosure of medical information to patients in clinical settings differs among cultures and can influence judgments about the amount and kind of information that should be disclosed in research settings. In the United States, the requirements for disclosure of information to potential participants in research are specific and detailed (45 CFR 46.116). The Commission has found some evidence that disclosures relating to diagnosis and risk, research design, and possible post-trial benefits are not always clearly presented in clinical trials conducted in developing countries, even though the current U.S. regulations include such requirements. For example, one disclosure requirement in the U.S. regulations focuses on potential benefits: ''a description of any benefits to the subject or to others which may reasonably be expected from the research'' (45 CFR 46.116(a)(1)). Traditionally, such a disclosure has been required to ensure that potential participants understand whether there is any possibility that the intervention itself might benefit them while they are enrolled in the study. There is, however, no specific mention of any possible post-trial benefits in current U.S. regulations. The Commission believes that, because this information is relevant to participants' decisions to participate in the trial, prospective participants should be informed of the potential benefits, if any, that they might receive after the trial is over.

Recommendation 3.2

Researchers should develop culturally appropriate ways to disclose information that is necessary for adherence to the substantive ethical standard of informed consent, with particular attention to disclosures relating to diagnosis and risk, research design, and possible post-trial benefits. Researchers should describe in their protocols and justify to the ethics review committee(s) the procedures they plan to use for disclosing such information to participants.

Recommendation 3.3

Ethics review committees should require that researchers include in the informed consent process and consent documents information about what benefits, if any, will be available to research participants when their participation in the study in question has ended.

Ensuring Comprehension

In some cultures, the belief system of potential research participants does not explain health and disease using the concepts and terms of modern medical science and technology. However, despite this potential barrier to adequate understanding, if they are willing to devote the time and effort to do so, researchers often are often able to devise creative measures to overcome this barrier. Despite the acknowledged difficulties of administering tests of understanding, NBAC supports the idea of incorporating these tests into research protocols.

Recommendation 3.4

Researchers should develop procedures to ensure that potential participants do, in fact, understand the information provided in the consent process and should describe those procedures in their research protocols.

Recommendation 3.5

Researchers should consult with community representatives to develop innovative and effective means to communicate all necessary information in a manner that is understandable to potential participants. When community representatives will not be involved, the protocol presented to the ethics review committee should justify why such involvement is not possible or relevant.

Recognizing the Role of Others in the Consent Process

In some cultures, investigators must obtain permission from a community leader or village council before approaching potential research participants. Yet, it is important to distinguish between obtaining permission to enter a community for the purpose of conducting research and for obtaining individual informed consent. In their reports, NBAC consultants all noted that the role of community leaders or elders is an integral part of the process of recruiting research participants. Although these reports typically use the terminology of consent to refer to the community's permission or a leader's authorization for the researchers to approach individuals, NBAC will use this term to refer to the permission or authorization given by the individual being recruited as a research participant.

The need to obtain permission from a community leader before approaching individuals does not need to compromise the ethical standard requiring the individual's voluntary informed consent to participate in research. Gaining permission from a community leader is no different, in many circumstances, from the common requirement in this country of obtaining permission from a school principal before involving pupils in research or from a nursing home director before approaching individual residents. An ethical problem arises only when the community leader exerts pressure on the community in a way that compromises the voluntariness of individual consent. In NBAC's view, if the political system in a country or the local situation makes it impossible for individuals' consent to be voluntary and that fact is known in advance, then, because U.S. researchers cannot adhere to the substantive ethical standard of informed consent, it would be inappropriate for them to choose such settings.

Recommendation 3.6

Where culture or custom requires that permission of a community representative be granted before researchers may approach potential research participants, researchers should be sensitive to such local requirements. However, in no case may permission from a community representative or council replace the requirement of a competent individual's voluntary informed consent.

Recommendation 3.7

Researchers should strive to ensure that individuals agree to participate in research without coercion or undue inducements from community leaders or representatives.

Family Members

It is customary although not required in some societies for other members of a potential research participant's family to be involved in the informed consent process. For example, in cultures in which men are expected to speak for their unmarried adult daughters and husbands are expected to speak for their wives, a woman may not be permitted to consent on her own behalf to participate in research. In most instances, the need to involve the family is not intended as a substitute for individual consent, but rather as an additional step in the process. In many cases, family members may be

approached before an individual is asked directly to participate in a research project. However, seeking permission from family members without engaging the potential research participants at all clearly departs from the ethical standard of informed consent. On the other hand, potential participants might also choose to involve others, such as family members, in the consent process. Indeed, involving family or community members in the informed consent process need not diminish, and might even enhance, the individual's ability to make his or her own choices and to give informed consent (or refusal).

It is often possible to obtain individual informed consent, which may require and indeed benefit from the involvement of family or community members, while at the same time preserving cultural norms. Such involvement ranges from providing written information sheets for potential participants to take home and discuss with family members to holding community meetings during which information is presented about the research and community consensus is obtained. When the potential participant wishes to involve family members in the consent discussion, the researcher should take appropriate steps to accommodate this desire.

Recommendation 3.8

When a potential research participant wishes to involve family members in the consent process, the researcher should take appropriate steps to accommodate this wish. In no case, however, may a family member's permission replace the requirement of a competent individual's voluntary informed consent.

Consent by Women

A strict requirement that a husband must first grant permission before researchers may enroll his wife in research treats the woman as subordinate to her husband and as less than fully autonomous. In reality, it may be impossible to conduct some research on common, serious health problems that affect only women without involving the husband in the consent procedures. In such cases, a likely consequence would be a lack of knowledge on which to base health care decisions for women in that country. The prospect of denying such a substantial benefit to all women in a particular culture or country calls for a narrow exception to the requirement that researchers use the same procedures in the consent process for women as for men, one that would allow for obtaining the permission of a man in addition to the woman's own consent.

Recommendation 3.9

Researchers should use the same procedures in the informed consent process for women and men. However, ethics review committees may accept a consent process in which a woman's individual consent to participate in research is supplemented by permission from a man if all of the following conditions are met:

(a) it would be impossible to conduct the research without obtaining such supplemental permission; and

(b) failure to conduct this research could deny its potential benefits to women in the host country; and

(c) measures to respect the woman's autonomy to consent to research are undertaken to the greatest extent possible.

In no case may a competent adult woman be enrolled in research solely upon the consent of another person; her individual consent is always required.

Minimizing the Therapeutic Misconception

One barrier to understanding the relevant, important aspects of any proposed research is what has been called the therapeutic misconception. This term refers to the belief that the purpose of a clinical trial is to benefit the individual patient rather than to gather data for the purpose of contributing to scientific knowledge. The therapeutic misconception has been documented in a wide range of developing and developed countries.

It is important to distinguish the confusion that arises from the therapeutic misconception from a related consideration. In the research setting, participants often receive beneficial clinical care. In some developing countries, the type and level of clinical care provided to research participants may not be available to those individuals outside the research context. It is not a misconception to believe that participants probably will receive good clinical care during research. But it is a misconception to believe that the purpose of clinical trials is to administer treatment rather than to conduct research. Researchers should make clear to research participants, in the initial consent process and throughout the study, which activities are elements of research and which are elements of clinical care.

Recommendation 3.10

Researchers working in developing countries should indicate in their research protocols how they would minimize the likelihood that potential participants will believe mistakenly that the purpose of the research is solely to administer treatment rather than to contribute to scientific knowledge (see also Recommendation 3.2).

Addressing Procedural Requirements in the Consent Process

A number of issues may arise during the process of obtaining informed consent that require careful scrutiny before determining whether voluntary informed consent can be obtained. These include, for example, determining when it is necessary to obtain written consent and when oral consent should be permitted; when, if ever, it is appropriate to withhold important and relevant information from potential participants; the need in some cultures to obtain a community leader's or a family member's permission before seeking an individual's consent; and standards of disclosure for research participants in cultures in which people lack basic information about modern science or reject scientific explanations of disease in favor of traditional nonscientific beliefs.

In light of the cultural variation that might arise in international clinical trials, the Commission was especially interested in problems that may arise from expecting researchers in developing countries to adhere strictly to the substantive and procedural imperatives of the U.S. requirements for informed consent. NBAC was particularly interested in exploring ways of dealing with the situation that arises when cultural differences between the United States and other countries make it difficult or impossible to adhere strictly to the U.S. regulations that stipulate particular procedures for obtaining informed consent from individual participants. In general, it is important to distinguish procedural difficulties from those that reflect substantive differences in ethical standards. Clearly, more research is needed in this area.

Recommendation 3.11

U.S. research regulations should be amended to permit ethics review committees to waive the requirements for written and signed consent documents in accordance with local cultural norms. Ethics review committees should grant such waivers only if the research protocol specifies how the researchers and others could verify that research participants have given their voluntary informed consent.

Recommendation 3.12

The National Institutes of Health, the Centers for Disease Control and Prevention, and other U.S. departments and agencies should support research that addresses specifically the informed consent process in various cultural settings. In addition, those U.S. departments and agencies that conduct international research should sponsor workshops and conferences during which international researchers can share their knowledge of the informed consent process.

Access to Post-Trial Benefits

Discussions of the ethics of research with human beings usually center on issues regarding research design and approval and how individuals' rights and welfare are protected when they are enrolled in research protocols. The same has been true of the U.S. regulations, which only tangentially address what happens after a research project has ended by requiring that research participants must be informed in advance about what compensation, if any, will be provided if they are injured during the course of the research. Other questions about what should happen after a trial is completed are left unaddressed by U.S. guidelines.

Thus, central questions in the context of international research include the following: What benefits (in the form of a proven, effective medical intervention) should be provided to research participants, and by whom, after their participation in a trial has ended, and what, if anything, should be made available to others in the host community or country? Although these questions are relevant in terms of the ethical assessment of research—regardless of where the research is conducted—they are being posed with special force, especially regarding serious diseases that affect large numbers of people in developing countries. Therefore, the question of what benefits, if any, research sponsors should make available to participants or others in the host country at the conclusion of a clinical trial is particularly significant for those who live in developing countries in which neither the government nor the vast majority of the citizenry can afford the intervention resulting from the research. Of course, this is especially germane when a drug is proven to be effective in a clinical trial.

An ethically relevant feature that distinguishes most developing from developed countries is the lack of access to adequate health care by a large majority of the population. Many developed countries have long provided universal access to primary health care through a national health service or government-based insurance system. However, in the developing world, especially in the poorest countries in Africa and Asia, substantially fewer health care services are available (if any), and where they are available, access is severely limited. Access to health care is an important issue in research ethics, because an ethically appropriate clinical trial design requires an assessment of the level and nature of care or treatment available outside the research context, as well as any possible future health benefits that might arise from the research.

Recognizing that it is sometimes difficult to distinguish research from treatment when routine health care is inadequate or nonexistent, it cannot be denied that it may be difficult for participants, whose health status may be altered by their participation in a clinical trial, to distinguish between participating in research and receiving clinical care. Consequently, if all interventions by the research team cease at the end of a trial, participants may experience a loss and feel that the researchers in their clinical role have abandoned them. This sense of loss can take several forms, the starkest of which arises when participants are left worse off at the conclusion of the trial than they were before the clinical trial began. Being worse off does not mean that they were harmed by the research. It can simply mean that their medical condition has deteriorated because they were in what turned out to be the less advantageous arm of the protocol. Such an outcome—particularly when participants are worse off than they would have been had they received standard treatment or if they had been in the other arm of the trial—underlines the extent to which any research project can depart from the Hippocratic goal of ''first, do no harm,'' despite the best intentions and efforts of all concerned. When such a result occurs, efforts to restore participants at least to their pretrial status could be regarded as attempts to reverse a result that would otherwise be at odds with the ethical principles of nonmaleficence and beneficence.

Ironically, people who have benefited from an experimental intervention may also experience a loss if the intervention is discontinued when the project ends. It might be said that this is a risk the participant accepted by enrolling in the trial. But participants who are ill when they enter the research protocol may not be able to appreciate fully how they will feel when they face a deterioration in their medical condition (once the trial is completed) after having first experienced an improvement, even if the net result is a return to the status quo ante. One of the ways to mediate or reduce the burden of such an existential loss (the experience of loss as perceived by the research participant) and to sustain an appropriate level of trust between potential participants and the research enterprise is to continue to provide to research participants an intervention that has been shown to be efficacious in the clinical trial if they still need it once the trial is over.

Recommendation 4.1

Researchers and sponsors in clinical trials should make reasonable, good faith efforts before the initiation of a trial to secure, at its conclusion, continued access for all participants to needed experimental interventions that have been proven effective for the participants. Although the details of the arrangements will depend on a number of factors (including but not limited to the results of a trial), research protocols should typically describe the duration, extent, and financing of such continued access. When no arrangements have been negotiated, the researcher should justify to the ethics review committee why this is the case.

Providing Benefits to Others

Once it is recognized that research projects should sometimes arrange to provide post-trial benefits to participants, a question arises about the justice of differentiating between former trial participants and others in the host community who need similar medical treatments. Is the distinction between former research participants and those who were not merely arbitrary? Applying a competing concept of justice, typically referred to as the principle of fairness—treat like cases alike, and treat different cases differently—to this situation requires a consideration of whether family members (or others) who suffer from the same illness as the participants should be treated as ''like cases'' with respect to receiving an effective treatment. Similarly, are the claims to treatment of people who were eligible for and willing to participate in a clinical trial but who for any number of reasons were not selected comparable to the claims of those who were selected? Or are such cases not sufficiently similar because participants undertook the risks and experienced the inconveniences of the research?

In NBAC's view, the relevant distinction between research participants and these other groups of

individuals is that research participants are exposed to the risks and inconveniences of the study. Moreover, a special relationship exists between participants and researchers that does not exist for others. These are the ethical considerations that support the argument to provide effective interventions to research participants after a trial is completed.

On what basis then can one justify an ethical obligation to make otherwise unaffordable (or undeliverable) effective interventions available to members of the broader community or host country? Given that global inequities in wealth and resources are so vast, expecting governmental or industrial research sponsors to seek to redress this particular global inequity is unfair and unrealistic, especially when no such requirement exists in other spheres of international relationships. Typically, it is not the primary purpose of clinical trials to seek to redress these inequities.

Recommendation 4.2

Research proposals submitted to ethics review committees should include an explanation of how new interventions that are proven to be effective from the research will become available to some or all of the host country population beyond the research participants themselves. Where applicable, the investigator should describe any pre-research negotiations among sponsors, host country officials, and other appropriate parties aimed at making such interventions available. In cases in which investigators do not believe that successful interventions will become available to the host country population, they should explain to the relevant ethics review committee(s) why the research is nonetheless responsive to the health needs of the country and presents a reasonable risk/benefit ratio.

These concerns prompt the question of whether research sponsors should consider implementing arrangements, such as prior agreements (arrangements made before a clinical trial begins that address the post-trial availability of effective interventions to the host community and/or country after the study has been completed), that would allow some of the fruits of research to be available in the host country when the research is over. Such arrangements would be responsive to the health needs of the host country. The parties to these agreements usually include some combination of producers, sponsors, and potential users of research products. Although only a limited number of prior agreements, either formal (legally binding) or informal, are in place in international collaborative research today, it is useful to consider what role such agreements should play in the future.

Recommendation 4.3

Wherever possible, preceding the start of research, agreements should be negotiated by the relevant parties to make the effective intervention or other research benefits available to the host country after the study is completed.

Mechanisms to Ensure the Protection of Research Participants in International Clinical Trials

The two principal approaches used to ensure the protection of human participants in international clinical trials are (1) relying on assurance processes and reviews by U.S. Institutional Review Boards (IRBs) to supplement and enhance local measures or determining that a host country or host country institution has a system of protections in place that is at least equivalent to that of the United States and (2) helping host countries build the capacity to independently conduct clinical trials and to conduct their own scientific and ethical review. In addition, a regulatory provision permits the substitution of foreign procedures that afford protections to research participants that are ''at least equivalent'' to those provided in the Common Rule. Clarification of the scope and limits of these mechanisms and their use would increase public confidence that a valid system of protections is in place for participants in clinical trials conducted abroad.

Negotiating Assurances of Compliance

U.S. researchers or sponsors and their collaborators often encounter difficulties with some of the procedural and administrative aspects of the U.S. research regulations or their implementation and at times perceive U.S. regulations as unnecessarily rigid. Among the many concerns NBAC heard were those relating to the process of negotiating assurances. An assurance is a document that commits an institution to conduct research ethically and in accordance with U.S. federal regulations. An approved assurance is a prerequisite to federally conducted or sponsored research.

In December 2000, the U.S. Office of Human Research Protections (OHRP) launched a new Federalwide Assurance (FWA) and IRB registration process. The process for filing institutional assurances with OHRP for protecting human research participants has been simplified by replacing Single, Multiple, and Cooperative Project Assurances with the FWA, one for domestic research and one for international research. Each legally separate institution must obtain its own FWA, and assurances approved under this process would cover all of the institution's federally supported human research. The proposed system eliminates the assurance documents now in place and replaces them with either a Federalwide Domestic Assurance or a Federalwide International Assurance, covering all federally supported human research.

NBAC was encouraged that OHRP is taking these steps to revise and simplify the current assurance process. It is not clear at this writing, however, whether the new FWA process will eliminate the problems and inconsistencies that exist among agencies such as the Department of Health and Human Services (DHHS), the Agency for International Development, and the Food and Drug Administration (FDA), or the difficulties expressed by researchers who are familiar with the previous assurance system. Moreover, it should be noted that the assurance process itself does not provide a failsafe system of protections. Because weaknesses in this system have been noted in failures at U.S. research institutions, care should be taken not to rely too heavily on this single mechanism to achieve protections abroad, especially when it is not clear that OHRP will provide a visible presence in the host country (through, for example, site visits). However, it will be important to evaluate the success of these new initiatives.

Recommendation 5.1

After a suitable period of time, an independent body should comprehensively evaluate the new assurance process being implemented by the Office for Human Research Protections.

Ethics Review

It is now widely accepted that research involving human participants should be conducted only after an appropriate ethics review has occurred. When research is sponsored or conducted in accordance with U.S. research regulations (and within the boundaries of these regulations), an appropriately constituted and designated IRB is empowered to make these assessments. However, spokespersons from developing countries have maintained that those who live in the countries in which the research is to be conducted are in the best position to decide what is appropriate, rather than those who may be unfamiliar with local health needs

and culture. It is argued that committees that are familiar with the researchers, institutions, potential participants, and other factors associated with a study are likely to provide a more careful and fully informed review than a committee or other group that is geographically displaced or distant and that only local committees can exercise the kind of balanced and reasoned judgment required to review research protocols. The concept of local review has been a cornerstone of the U.S. system for protecting human participants. Whether this standard can or should be applied to research sponsored or conducted abroad was a focus of Commission deliberations.

NBAC found that the requirement for local review is occasionally tested and sometimes weakened when research is conducted in developing countries. In some cases, review by a local committee raises the potential for conflict of interest—or at least a heightened interest in approving research—when it means that valuable research funds would flow to a local institution. Although several developing countries have instituted national research ethics guidelines, and in some countries, ethics review is becoming more established, many difficulties and challenges to local review remain, including lack of experience with and expertise in ethics review principles and processes; conflict of interest among committee members; lack of resources for maintaining the committees; the length of time it can take to obtain approvals; and problems involved with interpreting and complying with U.S. regulations.

In NBAC's view, efforts to enhance collaboration in research must take into account the capacity of ethics review committees in developing countries to review research and the need for U.S. researchers and sponsors to ensure that their research projects, at the very least, are conducted according to the same ethical standards and requirements applied to research conducted in the United States. This has led NBAC to conclude that when clinical trials involve U.S. and foreign interests, these protocols must still be reviewed and approved by a U.S. IRB and by an ethics review committee in the host country, unless the host country or host country institution has in place a system of equivalent substantive ethical protections.

Ideally, equivalent (although not necessarily identical) systems for providing protections to research participants in developing countries would exist at both the national and institutional levels. In countries in which a system equivalent to the U.S. system exists at the national level, some institutions may be incapable of conducting research in accordance with that system. However, it is difficult to conceive of institutional systems being declared equivalent in the absence of an equivalent national system, although it may be possible in a few extremely rare cases. When multiple sponsors are participating in research, possibly all from developed countries, determining which ethics review committees (and how many) are required poses additional complexities. Because there may be legitimate reasons to question the capacity of host countries to support and conduct prior ethics review, NBAC believes that with respect to research sponsored and conducted by the United States, it will be necessary for an ethics review committee from the host country and a U.S. IRB to conduct a review. The FDA's regulatory provisions for accepting foreign studies not conducted under an investigational new drug application or an investigational device exemption do not address whether the foreign nation's system must meet U.S. ethical standards.

Recommendation 5.2

The U.S. government should not sponsor or conduct clinical trials in developing countries unless such trials have received prior approval by an ethics review committee in the host country and by a U.S. Institutional Review Board.

However, if the human participants protection system of the host country or a particular host country institution has been determined by the U.S. government to achieve all the substantive ethical protections outlined in Recommendation 1.1, then review by a host country ethics review committee alone is sufficient.

Recommendation 5.3

The Food and Drug Administration should not accept data from clinical trials conducted in developing countries unless those trials have been approved by a host country ethics review committee and a U.S. Institutional Review Board. However, if the human participants protection system of the host country or a particular host country institution has been determined by the U.S. government to achieve all the substantive ethical protections outlined in Recommendation 1.1, then review by a host country ethics review committee alone is sufficient.

Lack of Resources as a Barrier to Ethics Review

Ethics review committees in developing countries may have difficulty complying with U.S. regulations because they lack the funds necessary to carry out their responsibilities. In previous reports, NBAC has recognized that there are costs to providing protection to human participants in research, and researchers and institutions should not be put in the position of having to choose between conducting research and protecting participants. Therefore, an additional means of enhancing international collaborative research is to make the necessary resources available for conducting ethics reviews.

Recommendation 5.4

Federal agencies and others that sponsor international research in developing countries should provide financial support for the administrative and operational costs of host country compliance with requirements for oversight of research involving human participants.

Equivalent Protections

Although many countries have promulgated extensive regulations or have officially adopted international ethical guidelines invoking high standards for research involving human participants, the former Office for Protection from Research Risks (OPRR) never determined that any guidelines or rules from other countries—even countries such as Australia and Canada, where research ethics requirements closely parallel (and to some extent exceed) those of the United States'afford protections equal to those provided by U.S. regulations. If these variations cannot be mediated by joint efforts, difficulties may arise in international research that will prevent important and ethically sound research from going forward.

In June 2000, OHRP became the agency responsible for making determinations of equivalent protections for DHHS. However, to date, OHRP has not provided criteria for determining what constitutes equivalent protections or made any such determinations about other countries' guidelines. In lieu of having developed a process for making equivalent protections determinations, in the past OPRR relied on its usual process for negotiating assurances with foreign institutions to ensure the adequate protection of human participants.

Because the number of U.S.-sponsored studies undertaken in

collaboration with other countries is increasing (including many studies that have different procedural requirements), there is a need to enhance the efficiency of those efforts through increased harmonization and understanding, without compromising the protection of research participants. A way must be found to adhere to widely accepted substantive ethical principles while at the same time avoiding the undue imposition of regulatory procedures that are peculiar to the United States.

Recommendation 5.5

The U.S. government should identify procedural criteria and a process for determining whether the human participants protection system of a host country or a particular host country institution has achieved all the substantive ethical protections outlined in Recommendation 1.1.

Building Host Country Capacity To Review and Conduct Clinical Trials

A unique feature of international collaborative research is the degree to which economically more prosperous countries can enhance and encourage further collaboration by leaving the host community or country better off as a result. The kinds of benefits that could be realized as a result of the collaboration would depend on local health conditions, the state of economic development, and the scientific capabilities of the particular host country. The provision of post-trial benefits to participants or others in the form of effective interventions is one option. The appropriateness of providing a benefit other than the intervention will depend on the nature of the benefit and on the economic and technological state of development of the host country. In most cases, offering assistance to help build local research capacity is another viable option. These two options are not, of course, mutually exclusive. But no matter what form the benefit takes, the ultimate goal of providing it is to improve the welfare of those in the host country.

Approaches to capacity building are related to, but not fully dependent on, the clarification and improvement of current U.S. procedures for ensuring the protection of research participants in international clinical trials. Progress can and should occur simultaneously in both realms. Capacity building to conduct research could include activities undertaken by investigators or sponsors during a clinical trial to enhance the ability of host country researchers to conduct research (e.g., training and education) or to provide research infrastructure (e.g., equipment) so that future studies might proceed. Building capacity to conduct scientific and ethics review of studies, on the other hand, is primarily a matter of providing training and helping to establish systems designed to review proposed protocols and sustain mutually beneficial partnerships with other more experienced review bodies, including U.S. IRBs.

To enhance research collaborations between developing and developed nations, it is important to increase the capacity of resource-poor countries to become even more meaningful partners in international collaborative research. Making the necessary resources available for improving the technical capacity to conduct and sponsor research, as well as the ability to carry out prior ethics review, is one way to move forward in this effort.

Recommendation 5.6

Where applicable, U.S. sponsors and researchers should develop and implement strategies that assist in building local capacity for designing, reviewing, and conducting clinical trials in developing countries. Projects should specify plans for including or identifying funds or other resources necessary for building such capacity.

Recommendation 5.7

Where applicable, U.S. sponsors and researchers should assist in building the capacity of ethics review committees in developing countries to conduct scientific and ethical review of international collaborative research.

Conclusions

The ethical standards that NBAC is recommending for conducting research in other countries are minimum standards. Host countries might find it worthwhile to adopt human research participant protections that go beyond the protections that are currently provided under the U.S. system if these higher standards further promote the rights, dignity, and safety of research participants as well as the credibility of research results.

Ethical behaviors and commitments are not barriers to the research enterprise. Indeed, ethical behavior is not only an essential ingredient in sustaining public support for research, it is an integral part of the process of planning, designing, implementing, and monitoring research involving human beings. Just as good science requires appropriate research design, consideration of statistical factors, and a plan for data analysis, it must also be based on sound ethical principles. Only then can research succeed in being efficient and cost-effective, while at the same time embodying appropriate protections for the rights and welfare of human participants. Researchers and sponsors should strive to conduct research in the United States and abroad in a way that furthers these aspirations, even though, regrettably, financial, logistical, and public policy obstacles often stand in the way of immediately achieving this goal.

Although the recommendations in this report focus principally on clinical trials conducted by U.S. researchers or sponsors in developing countries, it will be important to consider their application to other areas of research. However, even though many ethical issues that arise in clinical trials also arise in other types of research, the relevance, scope, and implications of NBAC's recommendations in other types of studies may be very different. Similarly, many of the issues and recommendations discussed in this report may equally apply to research conducted in the United States.

The relationships and, ultimately, the level of trust established among individuals, institutions, communities, and countries are determined by complex and often contradictory social, cultural, political, economic, and historical factors. It is essential, therefore, that sponsors, the countries from which they come, and researchers work together to enhance these collaborations by creating an atmosphere that is based on trust and respect. Finally, because attention will continue to focus on the ethical and policy issues that arise in international research in general and regarding clinical trials in particular, this report provides another opportunity for ongoing public dialogue about how to provide appropriate protection to all research participants.

Notes

1. In past reports, the Commission has used the term human subject to describe an individual enrolled in research. This term is widely used and is found in the Federal Policy for the Protection of Human Subjects (45 CFR 46). For many, however, the term subject carries a negative image, implying a diminished position of those enrolled in research in relation to the researcher. NBAC recognizes that merely changing terminology cannot achieve the desired goal of true participation by individuals who volunteer for research, and NBAC does not imply that a truly participatory role is always the case. Nevertheless, for purposes of simplicity and from a desire to encourage a more equal role for research volunteers, in this report the term participants is adopted to describe those who are enrolled in research.

2. An upcoming NBAC report on the oversight of research conducted with human

participants in the United States will address the implications of the findings and conclusions of this report in the context of domestic research.

3. In the United States, committees that review the ethics of human research protocols are referred to in regulation and practice as Institutional Review Boards (IRBs). In other countries, different names might be used, such as research ethics committees or ethics review committees. In this report, references and recommendations that are specific to the United States will refer to these committees as IRBs. References and recommendations that refer to such committees generally regardless of their geographic location will call them ethics review committees.

4. Although these protections are generally meant to apply to all research involving more than minimal risk, there are exceptions in certain guidelines for informed consent to be waived in research involving minimal risk.

FOR FURTHER INFORMATION ABOUT THE REPORT CONTACT: Eric M. Meslin, Ph.D., Executive Director, National Bioethics Advisory Commission, or to obtain copies of the report contact the NBAC office at 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone number (301) 402–4242, fax number (301) 480–6900. Copies may also be obtained through the NBAC website: www.bioethics.gov.

Dated: May 9, 2001.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 01–12142 Filed 5–14–01; 8:45 am]

BILLING CODE 4167–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1413]

Determination of Regulatory Review Period for Purposes of Patent Extension; Xenical

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Xenical and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Xenical (orlistat). Xenical is a lipase inhibitor indicated for obesity management that acts by inhibiting the absorption of dietary fats. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Xenical (U.S. Patent No. 4,598,089) from HLR Technology Corporation, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 7, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Xenical represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Xenical is 3,969 days. Of this time, 3,091 days occurred during the testing phase of the regulatory review period, while 878 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 12, 1988. The applicant claims June 24, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 12, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: November 27, 1996. The applicant claims November 26, 1996, as the date the new drug application (NDA) for Xenical (NDA 20–766) was initially submitted. However, FDA records indicate that NDA 20–766 was submitted on November 27, 1996.

3. *The date the application was approved*: April 23, 1999. FDA has verified the applicant's claim that NDA 20–766 was approved on April 23, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,824 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by July 16, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 15, 2001. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information

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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–12093 Filed 5–14–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0192]

Draft Guidance for Industry on Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution.'' The draft guidance is intended to assist establishments that are required to register (''registrants'') and submit listing information for drugs and biological products in obtaining and submitting the necessary forms to meet registration and listing requirements; this draft guidance will also assist those private label distributors that are not required to register, but elect to submit designated information directly to FDA. FDA proposes to make available through the Internet, rather than through conventional mail, the following registration and listing forms: Form FDA 2656 (Registration of Drug Establishment), Form FDA 2656e (Annual Update of Drug Establishment), Form FDA 2657 (Drug Product Listing), and Form FDA 2658 (Registered Establishments' Report of Private Label Distributors).

DATES: Submit written comments on this draft guidance document by July 16, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

For human drugs: Kathy Smith, Center for Drug Evaluation and Research (HFD–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1086.

For biological drugs: Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373, yetter@cber.fda.gov.

For veterinary drugs: Lowell Fried, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0165, lfried@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under part 207 (21 CFR part 207), as authorized and required by section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) and sections 351 and 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 262 amd 264), establishments (e.g. manufacturers, repackers, and relabelers) engaged in the manufacture, preparation, propagation, compounding, or processing of human drugs, veterinary drugs, and biological products, with certain exceptions, are required to register and submit listing information.

Under part 207, these ''registrants'' use Form FDA 2656 to submit establishment registration information and to submit annual re-registration information (FDA had also used Form FDA 2656e for annual re-registration, but this form will no longer be necessary); private label distributors use Form FDA 2656 to obtain a labeler code; registrants and, in some cases, private label distributors use Form FDA 2657 to submit listing information for drugs and biological products and to update listing information; and registrants use Form FDA 2658 to submit listing information for private label distributors (FDA has also used the compliance verification report for updating listing information). Registrants will use new Form FDA 3356 to submit establishment and listing information for those human cells, tissues, and cellular and tissue-based products regulated as drugs and/or biological products under the act and section 351 of the PHS Act beginning January 21, 2003.

If a registrant or private label distributor prefers to receive any of these forms through conventional mail, they may direct such requests to the designated agency contacts. Under the draft guidance, information previously submitted on Form FDA 2656e would be submitted on Form FDA 2656. Distribution of these forms through the Internet will reduce administrative costs to the agency. The draft guidance also contains registration information applicable to human cells, tissue, and cellular and tissue-based product establishments.

The draft guidance explains that, unless specifically requested otherwise, FDA is discontinuing the conventional mailing of these forms to registrants and private label distributors. These forms are available on the Internet. Registrants, and if appropriate, private label distributors must continue to submit completed forms to FDA in accordance with the registration and listing requirements in part 207. The draft guidance explains where to obtain the forms on the Internet, how to make changes to information, and where to submit completed forms.

Internet availability of these forms (instead of availability by conventional mail) is part of an agency initiative to use modern technology to facilitate the submission of establishment registration and listing information. FDA is developing software to make possible the electronic submission of the requisite registration and listing information for drugs and biological products. The agency plans to propose rulemaking that would revise the requirements for registration and listing and would require registrants to submit this information electronically.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments regarding the draft guidance. 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. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Comments may also be submitted electronically on the Internet at http://www.fda.gov/dockets/ecomments. Once on this Internet site, select the relevant ''docket number'' and follow the directions. Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm.

Dated: May 7, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–12179 Filed 5–14–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2406]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Final Guidance for Industry entitled ''Good Clinical Practice'' (VICH GL9); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (No. 85) entitled ''Good Clinical Practice'' (VICH GL9). This guidance document has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The final VICH guidance is intended to provide a unified standard for designing, conducting, monitoring, recording, and reporting studies used in registration applications for approval of veterinary products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time. This guidance will be implemented July 1, 2001.

ADDRESSES: Submit written requests for a single copy of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance document.

Submit written comments at any time on the final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852,—e-mail: *fdadockets@oc.fda.gov*.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann (HFV–120), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0220, e-mail: *3hschoene@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory recommendations. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical recommendations for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce the differences in technical recommendations for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Good Clinical Practice

In the **Federal Register** of August 3, 1999 (64 FR 42135), FDA published the notice of availability of the draft guidance entitled ''Good Clinical Practices'' (VICH GL9), giving interested persons until September 2, 1999 to submit comments. After considering the comments received, FDA made principally editorial changes. The final guidance was submitted to the VICH Steering Committee. At a meeting held on June 14 through 16, 2000, the VICH Steering Committee endorsed the final guidance for industry, VICH GL9.

The guidance is intended to be an international ethical and scientific quality standard for designing, conducting, monitoring, recording, auditing, analyzing, and reporting clinical studies evaluating veterinary products. This final guidance document is intended to be consistent with the laws of the European Union, Japan, and the United States.

VICH GL9 is a revision of and will replace CVM guidance No. 58 entitled ''Good Target Animal Studies Practices: Investigators and Monitors.'' In addition, there are some minor conflicts between this guidance and recent CVM guidance No. 56 entitled ''Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials,'' and No. 104 entitled ''Guidance for Industry: Content and Format of Effectiveness and Target Animal Safety Technical Sections and Final Study Reports for Submission to the Division of Therapeutic Drugs for Non-Food Animals.'' Until the center revises these guidances, sponsors should follow the

recommendations in VICH GL9 when differences among the guidances occur.

This Level 1 final guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115; 65 FR 56468, September 19, 2000). This guidance document represents FDA's current thinking on design and conduct of all clinical studies of veterinary products in the target species. It does not create or confer any rights for or on any person, and does not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

Information collected is covered under OMB control number 0910–0032.

III. Electronic Access

Copies of the final guidance documents entitled ''Good Clinical Practice'' (VICH GL9) may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm. Comments may also be submitted electronically on the Internet at http://www.fda.gov/dockets/ecomments. Once on this Internet site, select ''99D–2406 Good Clinical Practice'' and follow the directions.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this final guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend this guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this final guidance document at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of this final guidance document and received comments are available in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–12092 Filed 5–14–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–235]

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: Revision of a currently approved collection;

Title of Information Collection: Data Use Agreement and Information Collection Requirements, model language, and Supporting Regulations in 45 CFR, part 5b;

Form No.: HCFA–R–235 (OMB# 0938–0734);

Use: This agreement is used as a binding agreement stating conditions under which HCFA will disclose and user will maintain HCFA data that are protected by the Privacy Act.;

Frequency: On occasion;

Affected Public: Not-for-profit institutions;

Number of Respondents: 1,500;

Total Annual Responses: 1,500;

Total Annual Hours: 750.

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–R–235, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 24, 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. 01–12203 Filed 5–14–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Projects of National Significance; Targeted HIV Outreach and Intervention Model Development; Evaluation and Program Support Center

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

In the **Federal Register** of April 13, 2001, appearing on page 19180, second column, line 21 is an incorrect website to locate the guidance. The correct HRSA web site for the guidance should read, *www.hab.hrsa.gov/grants.html.*

Dated: May 9, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–12180 Filed 5–14–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 2001.

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: June 20–22, 2001; 8 am–5 pm.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting is open to the public on Wednesday, June 20, 2001, from 9 a.m.–10 a.m., and closed for the remainder of the meeting.

Purpose: To review research grant applications in the program areas of maternal and child health, administered by the Maternal and Child Health Bureau, Health Resources and Services Administration.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, June 20, 2001, from 10 a.m. to the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Dated: May 9, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–12181 Filed 5–14–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Enhancing Access and Measuring the Effectiveness of HIV/AIDS Information Methods

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 5, 2000, in Volume 65, No. 88, page 26220 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Library of Medicine may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Enhancing Access and Measuring the Effectiveness of HIV/AIDS Information Methods. Type of Information Collection Request: New. Need and Use of Information Collection: This study will assess the effectiveness of three information sources within the African American Community in disseminating HIV prevention information. HIV infection and the dissemination of prevention information is a major public health task in North Florida. Three types of African American communities from Gadsden, Leon, and Duval counties are selected as the sites of this study. This will include communities with rural, mixed rural/urban, and urban areas represented for assessing possible differences in health information channel preferences. This study will add to the body of knowledge concerning HIV information dissemination to African American communities in two ways: first, by assessing whether there are differences in the preferred health information channels of those living in rural, mixed, and urban areas; and secondly, by assessing three information dissemination channels for communicating HIV issues to African American communities. The three information channels of concern in this study are community newsletters, entertainment education, and church ministries. In the first year of the project, a brief survey will be conducted before and after distribution of the community newsletter to assess how the community obtains information about the prevention of HIV infection and transmission, their preferred sources of health information, and the effectiveness of the newsletter. The initial data collected will be used to establish a baseline for the project against which the subsequent project data can be evaluated.

Frequency of Response: On occasion. Affected Public: Individuals or households. Type of Respondents: Residents living in Duval, Gadsden and Leon counties, Florida. The annual reporting burden is as follows: Estimated Number of Respondents: 360; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: .334 and Estimated Total Annual Burden Hours Requested: 120. The annualized cost to respondents is estimated at: $844.80. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) 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 Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed collection of information contact: Cynthia B. Love, National Library of Medicine, Building 38A, Room 3N–311C, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number (301) 496–5306. You may also e-mail your request to: *cindy_love@nlm.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before June 14, 2001.

Dated: May 7, 2001.

Donald C. Poppke,

Associate Director for Administrative Management, National Library of Medicine.

[FR Doc. 01–12123 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 09/185,408 filed May 6, 1996 entitled ''Glycoprotein Hormone Superagonists'', to N.V. Organon, having a place of business in The Netherlands. The field of use may be limited to the treatment of human infertility. The United States of America is the assignee of the patent rights in this invention. This announcement replaces two previous notices to grant an exclusive license to this technology—64 FR 38685, July 19, 1999 and 65 FR 5878–5879, February 7, 2000.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 16, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Marlene Shinn, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 285; Facsimile: (301) 402–0220; e-mail: MS482M@NIH.GOV.

SUPPLEMENTARY INFORMATION: This invention relates generally to modified glycoprotein hormones and specifically to modifications to a human glycoprotein, which create superagonist activity. Glycoprotein hormones comprise a family of hormones, which are structurally related heterodimers consisting of a species common α sub-unit and a distinct β sub-unit that confers the biological activity for each hormone.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 7, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–12124 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Optical Fiber Probe and Methods for Measuring Optical Properties''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in: U.S. Patent Application No. 09/428,832 ''Optical Fiber Probe and Methods for Measuring Optical Properties'' filed October 28, 1999, taking priority from U.S. Provisional Application No. 60/105,945 filed October 28, 1998, to AzurTec, Inc. with a place of business in Newtown, Pennsylvania. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the use of metachromatic dye staining in the diagnosis and treatment of cervical, oral pharyngeal, bladder and gastrointestinal cancer.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before July 16, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Dale D. Berkley, Ph.D., J.D. Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 223; Facsimile: (301) 402–0220; E-mail: *berkleyd@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The invention is a probe for the characterization of optical scattering and absorption properties of a sample illuminated by an illumination fiber situated next to at least two collection fibers. The collection fibers are spaced at various distances from the illumination fiber, and fluorescence spectra are typically measured using the invention. Linear and concentric arrangements of the collecting fibers are employed in the invention to obtain an intensity distribution of diffusely reflected light, which distribution can be used to distinguish samples of different tissues for medical purposes.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 7, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–12125 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Discovery of Proteins That Are Aberrantly Expressed in Laser Capture Microdissected Human Solid Tumors

Emmanuel Petricoin (FDA), Lance Liotta (NCI), Michael Emmert-Buck (NCI), Yingming Zhao (EM)

DHHS Reference No. E–083–01/0 filed 01 February 2001

Licensing Contact: Matthew Kiser; 301/496–7735 ext. 224; e-mail: kiserm@od.nih.gov

The post-genomic era has created a need for a direct method to monitor the levels of expressed proteins in developing, diseased or genetically altered tissues. Direct monitoring of tissue has proven difficult because of the heterologous, three-dimensional structure. Prior methods for extracting and analyzing biomolecules from tissue subpopulations were complicated, labor intensive, and did not utilize protein stabilizers. There has been no way to directly compare, without the danger of cross-contamination, the spectrum of proteins contained in normal cells with the proteins in tumor cells in a single tissue. Many of the hypotheses regarding altered protein levels in tumor cells have been based on work on cell lines and their viability in culture media. The amount and type of protein expressed by cells in the native tissue environment can be quite different than that of cultured cells. Thus, the need exists for a direct means of measuring protein levels to obtain results reflecting *in vivo* conditions. This technology supplies the means to obtain *in vivo* expression levels.

The present invention describes devices and methods for performing protein analysis on laser capture microdissected cells, which facilitate proteomic analysis on cells of different populations. The protein content can be determined by any of the standard analytical techniques: immunoassays, 1D and 2D electrophoresis, Western blotting, LCQ–MS, MALDI/TOF, and SELDI. Specific applications include, but are not limited to, analysis of normal versus malignant cells, differential expression determination of cellular proteins at various disease states (e.g. normal, pre-malignant, tumor), and comparison of expression levels of different types of cancers (e.g. esophageal, prostate, breast, ovarian, lung, and colon cancer).

A second embodiment of this technology provides specific examples of tumor or tumor-stage linked protein ''fingerprints'' and specific proteins identified from these ''fingerprints'' as being aberrantly expressed in specific diseased cell types. Furthermore, methods of using these ''fingerprints'', sub-sets thereof, and individual proteins in the diagnosis, prognosis, treatment, treatment selection, and drug development for disease are provided.

Production and Use of Anti-Dorsalizing Morphogenetic Protein

M. Moos Jr., M. Krinks, S. Wang (FDA)

Serial No. 08/335,583 filed 08 Nov 1994, now US Patent 5,693,779 issued 02 Dec 1997

Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

This patent relates to the identification, isolation and cloning of the cDNA which encodes a protein, Anti-Dorsalizing Morphogenetic Protein-1 (ADMP–1). ADMP–1 is related to the bone morphogenetic proteins and is a member of the TGF beta superfamily. ADMP–1 is involved in the down-regulation of multiple factors related to tissue proliferation and may be useful in inhibiting inappropriate tissue proliferation such as that associated with psoriasis or melanoma.

This work has been published, in part, at Moos, M, et al. ''Anti-dorsalizing morphogenetic protein is a novel TGF-beta homolog expressed in the Spemann organizer'' Development 121(12):4293–301 (Dec 1995).

Dated: May 7, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–12126 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: May 31, 2001.

Open: 8 a.m. to 2:45 p.m.

Agenda: The agenda includes the Opening Remarks by Director, NCCAM, reports on NCCAM Intramural Program, NCCAM Health Disparities Plan, IRB Discussion, CAPCAM/Best Case Series Update, Public Comments, and other business of the Council.

Closed: 2:45 p.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Suite 106, Bethesda, MD 20892, 301/496–7801.

The public comments session is scheduled on from 11:15–11:45 a.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, HIH, 6707 Democracy Boulevard, Suite 106, Bethesda, Maryland, 20892, 301–496–

7801, Fax: 301–480–3621. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on May 25, 2001. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (June 10, 2001) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 106, Bethesda, Maryland 20892, (301) 496–7801, Fax 301–480–3621.

Dated: May 4. 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 01–12119 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFA TW–01–002, International Training & Research in Environmental & Occupational Health.

Date: June 13–15, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Brenda K Weis, Ph.D, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review Meeting for RFA 001–002—Toxicogenomics.

Date: June 19–22, 2001.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Governors Inn, I–40 and Davis Dr., Exit 280, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, Ph.D, Scientific Review Administrator, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 4, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–12118 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 19, 2001.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 3, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–12121 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: June 7–8, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street NW, Washington, DC 20004.

Contact Person: Raul A. Saavedra, Ph.D, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A.

Date: June 14–15, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037.
Contact Person: Richard D. Crosland, Ph.D, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders C.
Date: June 18–19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications
Place: Hilton Washington, 1919 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Alan Willard, Ph.D, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.
Date: June 21–22, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.
Contact Person: Lillian M. Pubols, Ph.D, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223. *lp28e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–12122 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panels.
Date: May 7, 2001.
Time: 3:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jeanne N. Ketley, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 4, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–12120 Filed 5–14–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in May 2001.

A portion of the meeting will be open and will include a roll call, general announcements, and discussion about consumer affairs, new program initiatives for the current fiscal year, the recently released Surgeon General's Report on youth violence, and grant findings from the ACCESS program, which dealt with issues related to mental health and homelessness. Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c) (4) and (6) and 5 U.S.C. App. 2. &10 (d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Patricia Gratton, Committee Management Officer, CMS, Room 11C–27, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–7987.

Committee Name: CMHS National Advisory Council.
Meeting Date: Thursday, May 24, 2001.
Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland.
Closed: May 24, 2001, 9 a.m.–10 a.m.
Open: May 24, 2001, 10:15 a.m.–5:30 p.m.
Contact: Eileen S. Pensinger, M.Ed., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17C–27, Rockville, Maryland 20857, Telephone: (301) 443–4823 and FAX (301) 443–4865.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 9, 2001.

Toian Vaughn,

Executive Secretary/Committee Management Officer Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–12096 Filed 5–14–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings small group sessions of five Substance Abuse and Mental Health Services Administration (SAMHSA) advisory committees (SAMHSA National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, and the Advisory Committee for Women's Services) in May 2001.

The organizing theme of the Year 2001 Joint Council Meeting is ''Taking the Pulse.'' The sessions on May 22 will be open and will include the Faith-based Initiative, co-occurring disorders and trauma, collaboration with NIAAA, NIDA, NIMH, HRSA and HCFA, reauthorization, integration across the lifespan and reducing health disparities. In addition, there will be presentations by the Directors of the National Institutes of Health, NIAAA, NIDA, and NIMH. On May 23, there will be follow-up reports from the May 22 sessions, an Agency report, a discussion on SAMHSA's budget issues, and presentations by SAMHSA's Directors of CSAP, CSAT, and CMHS.

Attendance by the public will be limited to space available. Public comments are welcome, and interested persons may present information or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should contact Toian Vaughn, Executive Secretary, Office of Extramural Programs, SAMHSA, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857, prior to May 18, 2001, and submit a brief statement of: the general nature of the information or arguments they wish to present, the names, addresses, and telephone numbers of proposed participants, identification of organizational affiliation, and an indication of the approximate time required to make their comments. Time for presentations may be limited by the number of requests. Photocopies, up to five pages of material, may be distributed at the meeting through the SAMHSA National Advisory Council Executive Secretary, if provided by May 18.

A summary of the meeting and/or a roster of committee members may be obtained from Toian Vaughn, Executive Secretary, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone (301) 443–4266, e-mail: tvaughn@samhsa.gov.

Substantive program information and information pertaining to special accommodations for persons with disabilities may be obtained from the contact whose name and telephone number is listed below.

Committee Names: Substance Abuse and Mental Health Services Administration, National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, Advisory Committee for Women's Services.

Meeting Date(s): Tuesday, May 22, 2001, Wednesday, May 23, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Open: May 22, 2001, 9 a.m.–6:30 p.m., May 23, 2001, 9:30 a.m.–6 p.m.

Contact: Toian Vaughn, M.S.W., Executive Secretary, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857, Telephone (301) 443–4266.

In addition, the Center for Mental Health Services (CMHS) National Advisory Council will hold its individual meeting. A portion of the meeting will be open and will include a roll call, general announcements, and a discussion about consumer affairs, new program initiatives for the current fiscal year, the recently released Surgeon General's Report on youth violence, and grant findings from the ACCESS program, which dealt with issues related to mental health and homelessness. Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

The meeting will include the review, discussion, and evaluation of individual grant applications. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(4), and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Patricia Gratton, Committee Management Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 11 C–26, Rockville, Maryland 20857, telephone: (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Closed: May 24, 2001, 9 a.m.–10 a.m.

Open: May 24, 2001, 10:15 a.m.–5:30 p.m.

Contact: Eileen S. Pensinger, Executive Secretary, Telephone: (301) 443–4823 and FAX: (301) 443–4865.

In addition, the Center for Substance Abuse Prevention (CSAP) National Advisory Council will hold its individual meeting. A portion of the meeting will be open and will include an update on CSAP's budget, recommendations by Council on the Center's programs, and discussions of the Faith-based Initiative, the Data Coordinating Center, administrative matters and announcements. Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

The meeting will include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(4), and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Ph.D., Executive Secretary, Rockwall II building, Suite 901, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Prevention, National Advisory Council.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Closed: May 24, 2001, 8:30 a.m.–11:30 a.m.

Open: May 24, 2001, 1 p.m.–4:30 p.m.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

In addition, the Center for Substance Abuse Treatment (CSAT) National Advisory Council will hold its individual meeting. A portion of the meeting will be open and include discussion of the Center's policy issues and current administrative, legislative, and program developments. Status reports on OPIOID Accreditation, and CSAT's Initiative for Homeless Substance Abusers will be presented. Other presentations include: The Faith Initiative; 42 CFR Part 2 and Child Protective Services; Parity Coalition; and Recovery Month. Council members will give updates on SAMHSA's Subcommittees, and discuss, ldquo;Substance Abuse and the Consumer''. Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with

disabilities, please notify the Contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and roster of council members may be obtained from: Ms. Cynthia Graham, CSAT, National Advisory Council, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland.

Closed: May 24, 2001, 8:30 a.m.–9 a.m.

Open: May 24, 2001, 9 a.m.–4:30 p.m.

Contact: Cynthia Graham, M.S., Public Health Analyst, Telephone: (301) 443–8923 and FAX: (301) 480–6077.

In addition, the Advisory Committee for Women's Services will hold its individual meeting. The meeting will include a discussion of policy and program issues relating to women's substance abuse and mental health service needs, cultural competency, and new 2002 funding opportunities addressing women. It will also include planning discussions for SAMHSA's Third National Conference on Women. Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Open: May 24, 2001, 9:30 a.m.–3:30 p.m.

Contact: Nancy P. Brady, Room 13–99, Parklawn Building, Telephone: (301) 443–5184.

In addition, the Substance Abuse and Mental Health Services Administration will hold its individual meeting. The meeting will be open and will include discussions related to SAMHSA's activities in the area of data, HIV/AIDS, and performance partnerships; follow up to the February 8–9, 2000 SAMHSA National Advisory Council Meeting; and a discussion on the SAMHSA Council and its seven workgroups.

Attendance by the public will be limited to space available. Public comments are welcome. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Open: May 24, 2001, 9:30 a.m.–5 p.m.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–89, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–1587 and e-mail: TVaughn@samhsa.gov.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 9, 2001.

Toian Vaughn,

Executive Secretary/Committee Management Officer, SAMHSA.

[FR Doc. 01–12094 Filed 5–14–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in May 2001.

The SAMHSA National Advisory Council meeting will be open and will include discussions related to SAMHSA's activities in the area of data, HIV/AIDS, and performance partnerships; follow up to the February 8–9, 2000 SAMHSA National Advisory Council Meeting; and a discussion on the SAMHSA Council and its seven workgroups.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Thursday, May 24, 2001, 9:30 a.m. to 5 p.m. (Open).

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–89, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–1587 and e-mail: *TVaughn@samhsa.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 9, 2001.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 01–12095 Filed 5–14–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in May 2001.

The agenda of the open portion of the meeting will include an update on CSAP's budget, recommendations by Council on the Center's programs, and discussions of the Faith-based Initiative, the Data Coordinating Center, administrative matters and announcements. Public comments are welcome. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

The agenda will include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and 5 U.S.C. App.2, 10(d).

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Ph.D., Executive Secretary, Rockwall II building, Suite 901, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the contact person listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Closed: May 24, 2001, 8:30 a.m. to 11:30 a.m.

Open: May 24, 2001, 1 p.m. to 4:30 p.m.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 9, 2001.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–12098 Filed 5–14–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in May 2001.

A portion of the meeting will be open and include discussion of the Center's policy issues and current administrative, legislative, and program developments. Status reports on OPIOID Accreditation, and CSAT's Initiative for Homeless Substance Abusers will be presented. Other presentations include: The Faith Initiative; 42 CFR part 2 and Child Protective Services; Parity Coalition; and Recovery Month. Council members will give updates on SAMHSA's Subcommittees, and discuss, ''Substance Abuse and the Consumer.'' Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations and for persons with disabilities, please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and 5 U.S.C. App. 2, 10(d).

A summary of the meeting and roster of council members may be obtained from: Ms. Cynthia Graham, CSAT, National Advisory Council, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Date: Thursday, May 24, 2001.

Place: Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland.

Closed: May 24, 2001—8:30 a.m.—9 a.m.

Open: May 24, 2001—9 a.m.—4:30 p.m.

Contact: Cynthia Graham, M.S., Public Health Analyst, Telephone: (301) 443–8923 and FAX: (301) 480–6077.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 9, 2001.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–12097 Filed 5–14–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in May 2001.

The meeting of the Advisory Committee for Women's Services will include a discussion of policy and program issues relating to women's substance abuse and mental health service needs; cultural competency, new 2002 funding opportunities addressing women and planning discussions for SAMHSA's Third National Conference on Women, consideration of the January 26, 2001 meeting minutes; and other policy issues. Public comments are welcome. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date: Thursday, May 24, 2001.

Meeting Time: 9:30 a.m.—3:30 p.m.

Place: Gaithersburg Marriott Washingtonian Center (at Rio) 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Open: May 24, 2001.

Contact: Nancy P. Brady, 5600 Fishers Lane, Parklawn Building, Room 13–99, Telephone: (301) 443–5184.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 9, 2001.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–12099 Filed 5–14–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit

to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–039100

Applicant: Nebraska Public Power District, Columbus, Nebraska.

The applicant requests a permit to conduct surveys for interior least terns (*Sterna antillarum*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Permit No. TE–039267

Applicant: Ronald L. Hartman, Rocky Mountain Herbarium, Laramie, Wyoming.

The applicant requests a permit to take Osterhout milkvetch (*Astragalus osterhoutii*), North Park phacelia (*Phacelia formosula*), and Penland alpine fen mustard (*Eutrema penlandii*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Permit No. TE–040242

Applicant: Harold Tyus, University of Colorado, Boulder, Colorado.

The applicant requests a permit to take Colorado pikeminnows (*Ptychocheilus lucius*), humpback chubs (*Gila cypha*), bonytail chubs (*Gila elegans*), and razorback suckers (*Xyrauchen texanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Permit No. TE–040241

Applicant: Roger L. Boyd, Baker University, Baldwin City, Kansas.

The applicant requests a permit to take interior least terns (*Sterna antillarum*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Written data or comments in regard to the applications should be sent to the address provided below. Documents and other information submitted in conjunction with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice—U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (Attn: ARD-Ecological Services); phone (303) 236–7400 or fax (303) 236–0027.

Dated: April 12, 2001.

John A. Blankenship,

Regional Director, Denver, Colorado.

[FR Doc. 01–12004 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

Permit No. TE–040341

Applicant: William Charles Larsen, Round Rock, Texas

Applicant requests a permit for recovery purposes to conduct surveys for the Texas blind salamander (*Typhlomolge rathbuni*), Peck's Cave amphipod (*Stybobromus*) (=*Stygonectes*) *pecki*), and following karst cave invertebrate species: Tooth Cave spider (*Neoleptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Helotes mold beetle (*Batrisodes venyivi*), Robber Baron Cave harvestman (*Texella cokendolpheri*), Robber Baron Cave spider (*Cicurina baronia*), Madla's cave spider (*Cicurina madla*), vesper cave spider (*Cincurina vespera*), Government Canyon cave spider (*Neoleptoneta microps*), as well as another cave spider (*Cicurina venii*) and two cave beetles (*Rhadine exilis* and *Rhadine infernalis*) that do not have common names. These activities will be conducted within Texas.

Permit No. TE–040342

Applicant: North Wind Environmental, Inc., Idaho Falls, Idaho

Applicant requests a permit to conduct presence/absence surveys for the black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Colorado pikeminnow (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*) within Chaco Culture National Historic Park, New Mexico.

Permit No. TE–040345

Applicant: U.S. Bureau of Reclamation, Yuma Area Office, Yuma Arizona

Applicant requests a permit to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) in Arizona.

Permit No. TE–014168

Applicant: Peter Sprouse, Austin, Texas

Applicant requests a permit to conduct presence/absence surveys for the following karst cave invertebrates: Helotes mold beetle (*Batrisodes venyivi*), Robber Baron Cave harvestman (*Texella cokendolpheri*), Robber Baron Cave spider (*Cicurina baronia*), Madla's cave spider (*Cicurina madla*), vesper cave spider (*Cincurina vespera*), Government Canyon cave spider (*Neoleptoneta microps*), as well as another cave spider (*Cicurina venii*) and two cave beetles (*Rhadine exilis* and *Rhadine infernalis*) that do not have common names. These activities will be conducted within Texas.

Permit No. TE–820022

Applicant: PBS&J, Austin, Texas

Applicant requests a permit to conduct presence/absence surveys for interior least tern (*Sterna antillarum athalassos*), Barton Springs salamander (*Eurycea sosorum*), Helotes mold beetle (*Batrisodes venyivi*), Robber Baron Cave harvestman (*Texella cokendolpheri*), Robber Baron Cave spider (*Cicurina baronia*), Madla's cave spider (*Cicurina madla*), vesper cave spider (*Cincurina vespera*), Government Canyon cave spider (*Neoleptoneta microps*), Bracken Bat Cave meshweaver (*Cicurina venii*) and two cave beetles (*Rhadine exilis* and *Rhadine infernalis*) that do not have common names. All activities will take place in Texas.

DATES: Written comments on these permit applications must be received on or before June 14, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S.

Fish and Wildlife Service, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Albuquerque, New Mexico, at the above address. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 01–12172 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Reopening of Comment Period: Draft Policy on National Wildlife Refuge System: Mission, Goals, and Purposes (Notice); Draft Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997 (Notice); Draft Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997 (Notice); and Draft Wilderness Stewardship Policy Pursuant to the Wilderness Act of 1964 (Notice)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; further reopening of comment period.

SUMMARY: We are reopening the comment period on the **Federal Register** notice dated January 16, 2001, that invites the public to comment on the following draft policies: National Wildlife Refuge System: Mission, Goals, and Purposes; Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; and Wilderness Stewardship Policy Pursuant to the Wilderness Act of 1964.

DATES: Submit comments by or before June 14, 2001. Note that you must resubmit comments sent to us between April 19, 2001 and before May 15, 2001.

ADDRESSES: Submit comments in the following ways: in writing to Acting Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, Virginia 22203; by FAX to (703) 358–2248; or by e:mail to one of the following addresses:

Mission_And _Goals_ Policy_Comments@fws.gov;

Appropriate_Uses_Policy_ Comments@fws.gov;

Wildlife_ Dependent_Recreational _Uses_Policy_Comments@fws.gov; or

Wilderness_Policy_Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Barry Stieglitz, Acting Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System (703) 358–1744.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice dated January 16, 2001 (66 FR 3668) we published draft policies for: National Wildlife Refuge System: Mission, Goals, and Purposes; Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; and Wilderness Stewardship Policy Pursuant to the Wilderness Act of 1964. These policies, affecting management and use of the National Wildlife Refuge System, represent the culmination of our initial policy development in response to the landmark National Wildlife Refuge System Improvement Act of 1997.

In a subsequent **Federal Register** notice dated March 15, 2001 (66 FR 15136) we extended the comment period until April 19, 2001 to ensure that the public had an adequate opportunity to review and comment on our draft policy.

To allow for continued discussion with the States on these policies, we are reopening the comment period for an additional 30 days.

Dated: April 30, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–12215 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–7122ES–839G; NMNM 104467]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public land in San Juan County, New Mexico has been examined and found suitable for classification for lease/conveyance to Farmington Municipal School under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Farmington School proposes to use the land for an elementary, a middle school, and a satellite transportation yard.

T. 29 N., R. 12 W.,
Sec. 2, lot 7;
Sec. 10, lot 1;
Sec. 11, lot 4.
Containing 116.14 acres, more or less.

Comment Dates: On or before June 29, 2001. Interested parties may submit comments regarding the proposed classification/conveyance of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Field Manager, Bureau of Land Management (BLM), 1235 La Plata Highway, Suite A, Farmington, NM 87401, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and 60 days from date of publication.

FOR FURTHER INFORMATION CONTACT: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington Field Office, at the above address.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. The segregative effect will terminate upon issuance of the patent to Farmington Municipal School, or two (2) years from the date of this publication, whichever occurs first.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of all minerals.

3. All valid existing rights, e.g. rights-of-way and leases of record.

4. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

The lands are not needed for Federal purposes. Lease/conveyance is consistent with current BLM land use planning and would be in the public interest.

Dated: April 30, 2001.

Joel E. Farrell,

Assistant Field Manager for Resources.

[FR Doc. 01–12154 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1610–00]

Intent To Prepare a Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for McGregor Range in Otero County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Prepare a Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for McGregor Range, New Mexico and Notice of Scoping Meetings.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508), and the Federal Land Policy and Management Act (FLPMA) of 1976, the BLM, Las Cruces Field Office will direct preparation of an RMPA/EIS by URS Corporation, a qualified consultant. The RMPA/EIS will address BLM's management of the withdrawn public land within McGregor Range in Otero County, New Mexico. The RMPA/EIS shall identify areas for limited, restricted, or exclusive uses; levels of resource production; allowable resource uses; resource condition objectives; program constraints; and general management direction.

The BLM will conduct two public scoping meetings to solicit input from the public. The dates, times, and locations for these meetings are as follows:

Date	Location
Wednesday, June 20, 2001, 6:30 p.m. to 8:30 p.m.	Otero County Courthouse, Commission Chambers, Room 253, 1000 New York Ave., Alamogordo, New Mexico.
Thursday, June 21, 2001, 6:30 p.m. to 8:30 p.m.	BLM—Las Cruces Field Office, 1800 Marquess Las Cruces, New Mexico.

DATES: Written comments will be accepted through July 5, 2001.

ADDRESSES: Comments should be sent to: Tom Phillips, BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, Team Leader, at (505) 525–4377 or Amy Lueders, Field Manager at (505) 525–4300.

SUPPLEMENTARY INFORMATION: In 1999 Congress passed the Military Lands Withdrawal Act (PL 106–65) which withdrew large tracts of public land for military purposes. PL 106–65 included the withdrawal of approximately 608,000 acres on McGregor Range in Southern New Mexico. The legislation directed the Secretary of the Interior to manage the natural resources on McGregor Range under FLPMA and to develop a management plan within two years of the law's enactment. The planning area will include withdrawn public land on McGregor Range in Otero County, encompassing approximately 608,000 acres administered by BLM. The BLM, will work in concert with the U.S. Army, Ft. Bliss, which will participate as a cooperating agency for the development of the RMPA/EIS.

It is anticipated that the RMPA/EIS process will require 18 months to complete and will include public and agency scoping, coordination and consultation with Federal, State, tribal, and local agencies, public review and public hearings on the published draft RMPA/draft EIS, a published proposed RMPA/final EIS, published Record of Decision, and Plan Amendment. Publication of the Record of Decision is anticipated in November, 2002.

The BLM Interdisciplinary team that will be developing this RMPA/EIS will include specialists with expertise in: soils, geology, vegetation, wildlife, livestock grazing, recreation, cultural/paleontology, and fire ecology.

BLM public information and scoping will include notification to the public and Federal, state, tribal, and local agencies of the proposed action; identification by the public of the range of issues and concerns to be considered in the EIS; development of planning criteria; and the solicitation of assistance from the public to identify reasonable alternatives. In addition, the public will have the opportunity to ask questions regarding the proposed project at scheduled public scoping meetings (see SUMMARY section of this notice).

Written comments should address: (1) Issues to be considered, (2) if the planning criteria are adequate for the issues, (3) feasible and reasonable alternatives to examine, and (4) relevant information having a bearing on the RMPA/EIS. BLM will maintain a mailing list of parties and persons interested in being kept informed about the progress of the RMPA/EIS. Documents relevant to this planning effort will be available for public review at the BLM Las Cruces Field Office located at 1800 Marquess, Las Cruces, New Mexico.

A range of reasonable alternatives, including an alternative considering no action as required by NEPA, will be developed and analyzed in the EIS. Through scoping, the public will assist in developing alternatives. The results of scoping will be sent to all those on the mailing list for this project in a newsletter or scoping report. Following an in-depth analysis of the impacts associated with the alternatives analyzed, one alternative will be selected as the agency-preferred alternative. The agency-preferred alternative will be identified in a draft RMPA/draft EIS scheduled to be released in the fall of 2001. Once the draft is released additional public review will be announced through the media and a **Federal Register** notice.

Anticipated Issues and Concerns

The anticipated Issues/Concerns include the following:

1. *Soil and Water:* Stream Channel Conditions; Water Quality; Water Quantity/Supply.

2. *Vegegation:* Management of Grassland Habitat; Noxious/Invasive Weeds.

3. *Visual Resources:* VRM classifications.

4. *Special Status Species:* Aplomado Falcon, Mountain Plover, and Black-tailed Prairie Dog.

5. *Fire Management:* Fire Control; Prescribed Fire.

6. *Livestock Grazing.*

7. *Recreation:* Public Access; Off Highway Vehicle management.

8. *Minerals:* Fluid Minerals; Solid Minerals.

9. Unexploded Ordinance (UXO)/ Hazardous Materials.

Preliminary planning criteria for guiding the development of the RMPA/ EIS include the following:

1. BLM resource management actions shall be compatible and consistent with military use in accordance with the Withdrawal Act, and must comply with all applicable laws, executive orders and regulations.

2. Clarify BLM and Fort Bliss management responsibilities on McGregor Range.

3. In each action, the resource outputs must be reasonable and achievable with available technology and budget constraints.

4. All BLM resource management actions on these withdrawn lands must be compatible with the principles of multiple-use and sustained yield.

5. Provide for public access to and across McGregor Range.

6. Provide for mineral development.

7. Identify water use needs and any impacts on existing water resources.

8. Identify the Sub-basins for McGregor Range and use it as the organization framework for the water resources discussion.

9. Maintain or improve vegetation conditions.

10. Identify any infestations of noxious/invasive weeds and provide for management alternatives to deal with existing and potential problems.

11. Provide for the harvesting of vegetation products.

12. Provide for the protection and management of the sensitive, State-listed, and Federally-listed plant and animal species.

13. Provide for livestock grazing.

14. Provide for the protection and management of wildlife habitat.

15. Identify any impacts of predator management.

16. Provide for hunting in concert with biological cycles.

17. Provide for recreational uses.

18. Establish off-highway vehicle designations.

19. Maintain or enhance visual quality.

20. Provide for the management of cultural and paleontological resources.

21. Continue to provide for the management of the Culp Canyon Wilderness Study Area under Interim Management Policy procedures pending Congressional determination.

In addition to the scoping taking place now, public participation will include consultation with affected users, and other agencies, meeting with interested groups and individuals, media notices, **Federal Register** notices, public meetings, and distribution of the draft RMPA/draft EIS and the proposed RMPA/final EIS.

Dated: May 2, 2001.

M. J. Chávez,

State Director.

[FR Doc. 01–12155 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1910–00; NMNM35829]

Legal Description for McGregor Range Withdrawal; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal description for the McGregor Range Withdrawal in New Mexico, as required by Section 3012(a)(1) of the Military Lands Withdrawal Act of 1999 (Public Law 106–65), enacted October 5, 1999. This withdrawal covers the same public land as was withdrawn previously under Public Law 99–606, which was enacted on November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, Team Leader, at (505) 525–4377 or Amy Lueders, Field Manager at (505) 525–4311, BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

SUPPLEMENTARY INFORMATION: The public land withdrawn under Public Law 106–65 encompasses approximately 608,385 acres in Otero County, New Mexico. This land is accurately described under a previous **Federal Register** dated Wednesday, May 20, 1987 (Vol. 52, No. 97, pages 18960 through 18963) and **Federal Register** Correction Notices dated Friday, June 12, 1987 (Vol. 52, No. 113, page 22577) and Monday, July 13, 1987 (Vol. 52, No. 133, pages 26188 through 26189).

Dated: April 23, 2001.

Amy L. Lueders,

Field Manager, Las Cruces.

[FR Doc. 01–12153 Filed 5–14–01; 8:45 am]

BILLING CODE 4310–VC–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1315]

Missing and Exploited Children's Program Proposed Program Plan for Fiscal Year (FY) 2001

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of proposed program plan for Missing and Exploited Children's Program for FY 2001.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its Missing and Exploited Children's Program Proposed Program Plan for FY 2001 and soliciting public comment on the overall plan and priorities. After analyzing the public comments on this Proposed Program Plan, OJJDP will issue its final FY 2001 Missing and Exploited Children's Program Plan.

DATES: Comments must be received on or before July 16, 2001.

ADDRESSES: Comments should be mailed to John J. Wilson, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Child Protection Division, 202–616–3637. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Pursuant to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, section 406(a)(2), 42 U.S.C. 5776, the Administrator of OJJDP is publishing for public comment a Proposed Program Plan for activities authorized by Title IV of the JJDP Act, the Missing Children's Assistance Act, 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to initiate or continue funding in FY 2001. Taking into consideration comments received on this Proposed Program Plan, the Administrator will develop and publish a Final Program Plan describing the program activities OJJDP intends to fund during FY 2001 using Title IV funds.

Other than solicitations for programs specified by Congress, notices of solicitations for competitive grant applications described in the Final Program Plan will be published in the **Federal Register** at a later date. No

proposals, concept papers, or other types of applications should be submitted in response to this proposed plan.

Background

For the purposes of Title IV, the term ''missing children'' refers to children who have been abducted by either a family or nonfamily member and includes children who have been abducted within the United States and those who have been abducted from the United States and taken to or illegally retained in a foreign country. The term ''child exploitation'' refers to any criminal activity that focuses on children as sexual objects and includes sexual abuse, child pornography, and prostitution.

Introduction to the Fiscal Year 2001 Proposed Program Plan

In 1984, Congress enacted the Missing Children's Assistance Act, which established the Missing and Exploited Children's Program (MECP) within OJJDP. Under the Act, OJJDP is responsible for coordinating Federal missing and exploited children activities, providing a national resource center and clearinghouse, and supporting research, training, technical assistance, and demonstration programs to enhance the overall response to missing children and their families.

In FY 2000, OJJDP's Missing and Exploited Children's Program made significant advances in the course of meeting its responsibilities to provide services to children, parents, educators, prosecutors, law enforcement, and other professionals and interested persons working on child safety issues. Some of the notable accomplishments are summarized below.

MECP's Team Hope Program developed and published an informational brochure and doubled its cadre of specially trained parents who help guide families searching for their children. In FY 2000, the program provided advice, mentoring, and information about existing resources to more than 800 families.

OJJDP chairs the Federal Agency Task Force on Missing and Exploited Children as part of its coordination responsibilities. In FY 2000, the task force continued to focus on enhancing and coordinating the Federal response to international child abductions. The task force is developing a parent-to-parent guide, which provides important information to families seeking the return of children abducted to or illegally retained in foreign countries, and a publication to guide law enforcement officers in investigating international parental abductions. Both publications are expected to be available in spring 2001.

In FY 2000, OJJDP's Internet Crimes Against Children Task Force (ICAC Task Force) added 20 new regional task forces and is now providing forensic, investigative, and prevention services in 31 States. Under this program, State and local law enforcement agencies develop multijurisdictional and multiagency responses to online victimization of children. Since this program was developed in 1998, task force agencies have arrested more than 250 offenders, identified hundreds of investigative targets, seized more than 500 computers, provided training to more than 3,800 prosecutors and law enforcement officers, and reached thousands of children, parents, and educators with information about safe online practices for children and teenagers.

In FY 2000, the National Center for Missing and Exploited Children's (NCMEC's) CyberTipline reached the 20,000-report mark and played an increasingly important role in ensuring that reports of suspicious online activity from children, parents, and private citizens were received by the appropriate law enforcement agencies. In partnership with OJJDP, NCMEC hosted a national investigative planning session and provided two week-long policy orientation seminars for the new ICAC Task Forces. NCMEC also expanded its Protecting Children Online training program with a course tailored to the specific needs of State and local prosecutors and provided training for more than 700 law enforcement managers and investigators regarding online crimes against children.

In FY 2000, through a cooperative agreement with Fox Valley Technical College (FVTC), OJJDP provided training or technical assistance to more than 4,500 prosecutors and law enforcement, social services, and health and family services professionals. FVTC integrates current research, state-of-the-art practice and knowledge, and new technologies into courses designed to increase skills and abilities, enhance service coordination and delivery, and improve the investigation and handling of missing and exploited children cases. FVTC also provided specialized technical assistance to State and local practitioners and juvenile justice agencies relating to Internet crimes against children, information sharing, response planning, child protection legislation, and multidisciplinary team development. In FY 2000, FVTC also completed development of a new child fatality investigative course to improve the way child deaths are investigated.

Finally, the Deputy Attorney General participated in the annual Missing Children's Day Ceremony to commemorate America's missing children and to recognize extraordinary efforts by law enforcement officers working to reunite children and their families. The NCMEC Law Enforcement Officer of the Year Award was presented to Captain David Bailey from the Lancaster, Ohio, Police Department.

Fiscal Year 2001 Programs

In FY 2001, OJJDP proposes to continue its concentration on programs that are national in scope and that promote awareness of and enhance the Nation's response to missing and exploited children and their families. While funds are not available for new program initiatives in FY 2001, OJJDP is interested in obtaining input from the field on program and service needs that will assist in its planning for both FY 2001 and future programming.

Continuation Programs

FY 2001 Title IV continuation programs are summarized below. Available funds, implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors. No additional applications will be solicited for any of these programs in FY 2001.

National Resource Center and Clearinghouse

In FY 2001, Congress provided funding to continue and expand the programs, services, and activities of the National Center for Missing and Exploited Children, a national resource center and clearinghouse dedicated to missing and exploited children and their families. As provided in Title IV, the functions of the Center include the following activities:

- Provide a toll-free hotline (1–800–843–5678) where citizens can report investigative leads and parents and other interested individuals can receive information about missing children.
- Provide technical assistance to parents, law enforcement, and other agencies working on missing and exploited children issues.
- Promote information sharing and provide technical assistance by networking with regional nonprofit organizations, State missing children clearinghouses, and law enforcement agencies.
- Develop publications that contain practical, timely information.

• Provide information regarding programs offering free or low-cost transportation services that assist in reuniting children with their families.

In FY 2000, NCMEC's toll-free hotline received approximately 103,000 calls ranging from citizens reporting information about missing children to requests from parents and law enforcement for information and publications. NCMEC also assisted in the recovery of hundreds of children, disseminated millions of missing children photographs, and sponsored a national training workshop for State missing children clearinghouses and relevant nonprofit organizations. NCMEC also assists the State Department in carrying out its Hague Convention responsibilities by processing incoming applications for children abducted to the United States and broadening its efforts to recover American children abducted to foreign countries. Both law enforcement and parents may contact NCMEC for assistance in locating missing children who may have been trafficked. NCMEC also provides general advice and information to parents who need help getting started in the search for a missing child, which may include children trafficked into the sex industry.

In FY 2000, NCMEC continued to perform the national resource center and clearinghouse functions and broadened the Protecting Children Online training program with a new course for prosecutors. NCMEC and the University of New Hampshire also released a research report pertaining to the frequency and prevalence of young people receiving unwanted sexual solicitations or being unwillingly exposed to pornography via the Internet.

Funding will be provided to NCMEC in FY 2001 to continue the functions of the national resource center and clearinghouse and operation of the Jimmy Ryce Law Enforcement Training Center which provides training to improve investigative responses to missing children cases.

Internet Crimes Against Children Regional Task Force Program

In FY 2000, 20 new awards were made to jurisdictions competing to participate in the ICAC Task Force program. The following agencies received regional ICAC Task Force awards: Massachusetts Department of Public Safety; Michigan State Police; Seattle, Washington, Police Department; Utah Office of the Attorney General; Nebraska State Patrol; Connecticut State Police; Maryland State Police; Clark County, Nevada (Las Vegas Metropolitan Police Department); Delaware County, Pennsylvania, Office of Prosecuting Attorney; Knoxville, Tennessee, Police Department; Alabama Department of Public Safety; Cuyahoga County, Ohio Office of Prosecuting Attorney; Hawaii Office of the Attorney General; North Carolina Division of Criminal Investigation; Oklahoma State Bureau of Investigation; Phoenix, Arizona, Police Department; Saint Paul, Minnesota, Police Department; San Diego, California, Police Department; Sedgewick County, Kansas, Sheriff's Department; and the Wyoming Division of Criminal Investigation.

Other FY 2000 ICAC Task Force program activities included partnering with SEARCH Group, Inc., of Sacramento, CA, to develop and deliver a hands-on investigative course and a national 3-day training workshop focusing on emerging technology and its relevance to criminal activities and ICAC investigative efforts. Also in FY 2000, OJJDP introduced the Investigative Satellite Initiative (ISI), which broadens the impact of the ICAC Task Force program by building the forensic and investigative capacities of State and local law enforcement agencies. Under the ISI program, agencies lacking the resources to commit to full-time regional task forces may still acquire OJJDP funds to train and equip local officers to respond to child pornography and cyber-enticement cases.

In FY 2001, OJJDP will continue to fund the 30 regional ICAC Task Forces and plans to make up to 35 new ISI awards.

Missing and Exploited Children Training and Technical Assistance Program

In FY 1998, Fox Valley Technical College (FVTC) was competitively awarded a cooperative agreement to provide training and technical assistance to law enforcement, prosecutors, and health and family services professionals. The purpose of this program is to ensure the provision of up-to-date, practical training and technical assistance to professionals working on missing and exploited children issues. Training focuses on investigative techniques, interview strategies, comprehensive response planning, media relations, case management, and other topics related to missing and exploited children cases.

Under the Missing and Exploited Children Training and Technical Assistance Program, FVTC offers five courses: Child Abuse and Exploitation Investigative Techniques, Child Abuse and Exploitation Team Investigation Process, Child Sexual Exploitation Investigations, Missing and Exploited Children, and Responding to Missing and Abducted Children. FVTC also provides technical assistance and support to the Federal Agency Task Force on Missing and Exploited Children and its related subcommittees; develops documents and publications relating to missing and exploited children; convenes special focus groups or meetings to facilitate communication and problem solving among youth service workers and professionals at the Federal, State, and local levels; and performs special projects as directed by OJJDP. These projects include designing response protocols for missing and exploited children cases, assisting communities to formulate policies and procedures, and reviewing child protection legislation. In FY 2001, FVTC will continue to provide training and technical assistance services related to missing and exploited children issues. No additional applications will be solicited in FY 2001.

Alzheimer's Disease and Related Disorders Association's Safe Return Program

Since FY 1992, OJJDP has awarded funds to the Safe Return Program of the Alzheimer's Disease and Related Disorders Association of Chicago, IL. This program facilitates the identification and safe return of memory-impaired individuals who are at risk of wandering from their homes. In FY 2000, the Safe Return Program increased its registration database to more than 53,000 individuals and assisted in the return of 980 wanderers.

In FY 2001, the program will continue the national registry program and the 24-hour toll-free hotline. In addition, the Safe Return Program will expand training and technical assistance efforts focusing on law enforcement and emergency personnel.

National Crime Information Center (NCIC)

OJJDP proposes to continue to transfer funds to the Department of Justice's Justice Management Division through a reimbursable agreement to continue NCMEC's online access to the Federal Bureau of Investigation's National Crime Information Center's (NCIC's) Wanted and Missing Persons files. The ability to verify NCIC entries, communicate with law enforcement through the Interstate Law Enforcement Telecommunication System, and be notified of life-threatening cases through the NCIC flagging system is crucial to NCMEC's mission of providing advice and technical assistance to law enforcement.

National Incidence Studies of Missing, Abducted, and Thrownaway Children (NISMART 2)

Under the Missing Children's Assistance Act, OJJDP is required to conduct periodic studies of the scope of the problem of missing children in the United States. The first national study was completed in 1988, with results published in 1990. In FY 1995, OJJDP funded NISMART 2, the second national study of missing, abducted, runaway, and thrownaway children in the United States. Temple University received funding in FY 1995 to conduct this study, which builds on the strengths and addresses some of the weaknesses of the initial NISMART study. Temple contracted with the University of New Hampshire Survey Research Laboratory and Westat, Inc., to carry out specific components of the study. The NISMART 2 study is (1) revising and enhancing NISMART 1 definitions, (2) surveying approximately 23,000 households by telephone to determine how many children are missing on an annual basis, (3) surveying law enforcement agencies to determine the annual frequency of child abductions, (4) surveying approximately 10,000 youth by telephone to understand what happens during missing children episodes, (5) interviewing directors of residential facilities and institutions to determine how many residents run away, and (6) analyzing data on thrownaway children from a related survey of community professionals. The findings from this study will provide updated estimates on the number of missing children each year in the United States. Preliminary findings will be available in late 2001, and a final report will be completed in FY 2002. An OJJDP Bulletin documenting the scope of the research, definition revisions, and methodology changes was published in FY 2000.

OJJDP support for NISMART 2 will continue in FY 2001. No additional applications will be solicited in FY 2001.

Parent Resource Support Network (Team Hope)

In FY 1997, OJJDP competitively awarded a cooperative agreement to Public Administration Services (PAS) to develop and maintain a parent support network, known as Team Hope. The goal of this project is to stimulate development of a network of screened and trained parent volunteers to provide assistance and advice to other parents searching for their children.

In FY 2001, PAS will train additional parent volunteers, continue to provide mentoring services to families searching for their missing children, and expand services to parents searching for children abducted to or illegally retained in foreign countries. No additional funding will be provided in FY 2001.

Jimmy Ryce Law Enforcement Training Center Program

In FY 1997, OJJDP, in partnership with NCMEC and the FBI, and under a grant to Fox Valley Technical College, developed and implemented the Jimmy Ryce Law Enforcement Training Center (JRLETC) program. JRLETC offers two law enforcement training tracks that are designed to improve the national investigative response to missing children cases.

JRLETC's Chief Executive Officer (CEO) seminars approach missing children cases from a management perspective and offer information about coordination and communication issues, resource assessment, legal concerns, and policy development for police chiefs and sheriffs. The Responding to Missing and Abducted Children (REMAC) course offers modules focusing on investigative techniques for all aspects of missing children cases. In FY 2000, 424 police chiefs and sheriffs and 409 investigators participated in at least one of the JRLETC programs.

Congress appropriated additional funds in FY 2001 to continue operation of the Jimmy Ryce Law Enforcement Training Center. OJJDP, NCMEC, the FBI, and FVTC will continue to provide training and technical assistance through the JRLETC and the onsite technical assistance program to respond to the numerous requests for assistance from JRLETC graduates.

Under the JRLETC appropriation, OJJDP will award continuation funding to FVTC to support regional REMAC courses, with additional funds supporting NCMEC's CEO seminars and onsite technical assistance program.

Association of Missing and Exploited Children's Organizations

OJJDP provides funds to the Association of Missing and Exploited Children's Organizations (AMECO) to improve—at the State and local levels—the quality, availability, and coordination of services provided to missing and exploited children and their families and to improve the capacity and capabilities of missing children nonprofit organizations. Although many AMECO member agencies serve parents and children who are the victims of domestic abduction, few are trained or equipped to provide specialized services to those involved in international abductions. Until recently, little attention has been given to the need to coordinate with local service providers and expand their services for children and their families.

In FY 2001, OJJDP proposes to provide additional funds to AMECO to hire full-time staff to support the expansion of services for parental abduction cases, provide parent-to-parent mentoring, support bi-annual meetings, and develop and disseminate written protocols, policies, procedures, and standards for nonprofit organizations for both domestic and international parental abduction cases.

No additional applications will be solicited in FY 2001.

National Center on Child Fatality Review

In FY 1997, OJJDP awarded a grant to the National Center on Child Fatality Review (NCCFR) in Los Angeles, CA, to develop State and local uniform reporting definitions and generic child fatality review team protocols for consideration by communities working on enhancing the investigation of child deaths.

NCCFR developed a model for integrating data among the Criminal Justice, Vital Statistics, and Social Services Child Abuse Indices. NCCFR also selected a National Advisory Board, which is composed of representatives from across the country and from relevant disciplines.

In FY 2001, OJJDP will provide continued support to NCCFR to continue its information dissemination and technical assistance activities related to child fatality investigations. No additional applications will be solicited in FY 2001.

Investigative Case Management for Missing Children Homicides

In FY 1993, OJJDP awarded a competitive grant to the Washington State Attorney General's Office (WAGO) to analyze the solvability factors of missing children homicide investigations. During the course of that research, WAGO collected and analyzed the specific characteristics of more than 550 missing child homicide cases. These characteristics were recorded in WAGO's child homicide database.

In FY 2000, WAGO identified additional cases to be included in the database and began the interview data collection process. In FY 2001, OJJDP proposes to continue to provide funding support to WAGO to ensure the vitality and investigative relevance of its child homicide database. This funding will support continued data collection,

database maintenance, and case consultation activities. The database information is available to Federal, State, and local law enforcement agencies to help them identify cases with similar characteristics. Law enforcement database inquiries can be made by calling WAGO at 800–345–2793.

No additional funding will be provided in FY 2001.

FBI Child Abduction and Serial Killer Unit

In FY 1997, OJJDP entered into an interagency agreement with the FBI's Child Abduction and Serial Killer Unit (CASKU) to expand research to broaden law enforcement's understanding of homicidal pedophiles' selection and luring of their victims, their planning activities, and their efforts to escape prosecution. This information is being used by the FBI and OJJDP in training and technical assistance programs. FY 2000 activities included refining the interview protocol, identifying incarcerated offenders who met requirements of the research criteria, conducting field tests of the interview protocol, and starting the interviews.

In FY 2001, CASKU will enhance data collection efforts and continue data analysis.

National Child Victimization Conference Support

In FY 2001, OJJDP will provide funding support to national conferences focusing on child abduction, exploitation, and victimization issues. These conferences frequently include workshops on child prostitution. This funding support will include conferences sponsored by the National Children's Advocacy Center, Dallas Police Department and Children's Advocacy Center, the American Professional Society on the Abuse of Children, and the San Diego Child Maltreatment Conference.

Dated: May 9, 2001.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 01–12116 Filed 5–14–01; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: May 23, 2001: 12 Noon–12:30 p.m.—Closed Session. May 24, 2001: 1 p.m.–2:15 p.m.—Closed Session. May 24, 2001: 2:15 p.m.–5 p.m.—Open Session.

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, www.nsf.gov/nsb.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, May 23, 2001

Closed Session (12 Noon–12:30 p.m.)

—Closed Session Minutes, March, 2001
—Election, NSB Executive Committee

Thursday, May 24, 2001

Closed Session (1 p.m.–2:15 p.m.)

—Awards and Agreements
—NSF Budget

Open Session (2:15 p.m.–5 p.m.)

—Presentations: Honorary Awards Recipients
—Open Session Minutes, March, 2001
—Closed Session Items for August, 2001
—Chairman's Report
—Director's Report
—NSB Annual Business
—Committee Reports
—Other Business

Marta Cehelsky,

Executive Director.

[FR Doc. 01–12386 Filed 5–11–01; 3:39 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Facility Operating License (FOL) Nos. DPR–70 and DPR–75 issued to PSEG Nuclear LLC (the licensee) for operation of Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2. The facility is located at the licensee's site on the southern end of Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey. Salem, New Jersey is located approximately 7.5 miles northeast of the site.

Environmental Assessment

Identification of the Proposed Action

The proposed license amendment would revise the FOL and Technical Specifications (TS) of Salem, Unit Nos. 1 and 2, to allow the licensee to increase the licensed core power level of each unit from 3,411 megawatts thermal (MWt) to 3,459 MWt, which represents a 1.4 percent increase in the allowable thermal power. Salem Unit No. 1 was granted conditional authorization for power production by its FOL issued on August 13, 1976. The conditions provided a sequential approach to full power with NRC approval at various stages. Full power operation of Unit No. 1 at 3,338 MWt core power was authorized by letter dated April 6, 1977. Amendment No. 71 to the original FOL was issued on February 6, 1986, which authorized a power uprate for Unit No. 1 to 3,411 MWt. Salem Unit No. 2 was authorized for power production at 3,411 MWt with issuance of the FOL on May 20, 1981. In addition to the power uprate, the proposed license amendment would allow the licensee to remove Attachment 1 from the Unit No. 1 FOL, and to make editorial changes to the TS Bases.

The proposed action is in accordance with the licensee's application for license amendment dated November 10, 2000, as supplemented by letters dated December 5, 2000, March 28 and April 2, 2001, and April 20, 2001 (LRN–01–0099, LRN–01–0115, and LRN–01–0123).

The Need for the Proposed Action

The proposed action will allow an increase in power generation at Salem, Unit Nos. 1 and 2 to provide additional electrical power for distribution to the grid. In certain circumstances power uprate has been recognized as a safe and cost-effective method to increase generating capacity.

The proposed action also will allow the removal of Attachment 1 from the Salem Unit No. 1 FOL and editorial changes to the TS Bases. Attachment 1 to the Salem Unit No. 1 FOL identifies incomplete preoperational tests, startup tests and other items which were required to be completed before proceeding to certain specified Operational Modes during the initial full power startup of Salem Unit No. 1. The NRC authorized full power operation of Salem Unit No. 1 by letter dated April 6, 1977; therefore, the requirements identified in the attachment are no longer applicable. Editorial changes will provide corrections to references and typographical errors.

Environmental Impacts of the Proposed Action

The environmental impact associated with operation of Salem, Unit Nos. 1

and 2, has been previously evaluated by the U.S. Atomic Energy Commission in the ''Final Environmental Statement Related to Operation of Salem Nuclear Generating Station, Units 1 and 2,'' dated April 1973. In this evaluation, the staff considered the potential doses due to postulated accidents for the site, at the site boundary, and to the population within 50 miles of the site. With regard to the consequences of postulated accidents, the licensee has reevaluated the current licensing basis analyses in its application for license amendment and determined the doses estimated in existing evaluations to remain bounding for the proposed 1.4% power uprate. No increase in the probability of these accidents is expected to occur. The removal of Attachment 1 from the Salem Unit No. 1 FOL and editorial changes to the TS Bases will not impact the probability or consequences of any postulated accidents.

With regard to normal releases, the current licensing basis analyses estimates the dose received inside and outside containment during normal operation based on 3,558 MWt core power. Therefore, the proposed 1.4% power uprate to 3,459 MWt core power is bounded by the current analyses and the offsite doses from normal effluent releases remain significantly below the bounding limits of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix I. Normal annual average gaseous releases remain limited to a small fraction of 10 CFR Part 20 limits for identified mixtures. In addition, the solid and liquid waste production may increase slightly; however, the waste production assumed in the analyses for normal operations at 3,558 MWt core power will bound the waste production expected for the power uprate. Solid and liquid waste processing systems are expected to operate within their design requirements. The removal of Attachment 1 from the Salem Unit No. 1 FOL and editorial changes to the TS Bases will not cause an increase in the on site and off site radiation exposure or in the amount of waste produced and released during normal operations.

The staff has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. With regard to thermal discharges to the Delaware River estuary, Appendix B to FOL Nos. DPR–70 and DPR–75, ''Environmental Protection Plan,'' states that ''[e]nvironmental concerns identified in the FES–OL [Final Environmental Statement—Operating License Stage (dated April 1973)] which relate to water quality matters are regulated by way of the licensee's NJPDES [New Jersey Pollution Discharge Elimination System] permit.'' The current NJPDES Permit imposes limits on Circulating Water System (CWS) flow to a 30-day average of 3,024 million gallons per day. In addition, the NJPDES limits the temperature of the discharged water to 115 °F between June 1 and September 30, and 110 °F for the remainder of the year. Also, the maximum permissible differential temperature of the water discharged from Salem, Unit Nos. 1 and 2, is 27.5 °F. The licensee stated that normal discharge water differential temperature is approximately 15 °F, and that the increase in temperature of the water discharged to the Delaware River resulting from the power uprate to 3,459 MWt core power will be approximately 0.3 °F. Existing administrative controls will ensure the conduct of adequate monitoring such that appropriate actions can be taken to preclude exceeding the limits imposed by the NJPDES.

The removal of Attachment 1 from the Salem Unit No. 1 FOL and editorial changes to the TS Bases will not impact thermal discharges to the Delaware River. No additional requirements or other changes are required as a result of the power uprate and the associated FOL and TS changes.

No other nonradiological impacts are associated with the proposed action.

Based upon the above, the staff concludes that the proposed action does not significantly affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Salem Nuclear Generating Station.

Agencies and Persons Consulted

In accordance with its stated policy, on May 1, 2001, the staff consulted with the New Jersey State official, Mr. R. Pinney of the New Jersey Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated November 10, 2000, as supplemented by letters dated December 5, 2000, March 28 and April 2, 2001, and three letters dated April 20, 2001 (LRN–01–0099, LRN–01–0115, and LRN–01–0123). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 8th day of May 2001.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–12191 Filed 5–14–01; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (*http://www.pbgc.gov*).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in May 2001. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in June 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in May 2001 is 4.80 percent (*i.e.,* 85 percent of the 5.65 percent yield figure for April 2001).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between June 2000 and May 2001.

For premium payment years beginning in:	The assumed interest rate is:
June 2000	5.23
July 2000	5.04
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93
December 2000	4.91
January 2001	4.67
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in June 2001 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of May 2001.

Joseph H. Grant,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–12199 Filed 5–14–01; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44271; File No. SR–Amex–2001–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of ''Interim Linkages''

May 7, 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 21, 2001, the American Stock Exchange LLC (''Amex'' 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 self-regulatory organization. On April 27, 2001, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Amex Rule 940 providing for the implementation of ''interim linkages'' with the other option exchanges.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement certain aspects of an intermarket options linkage on an ''interim'' basis.[5] This interim linkage would utilize existing systems to facilitate the sending and receiving of order flow between Amex specialists

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 26, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the proposed rule change be considered a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act, which renders the proposal effective upon receipt of this filing by the Commission, and requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange amended proposed Amex Rule 940(a)(6), which defines ''eligible order,'' to include a reference to subparagraph (d) of the proposed rule.

[4] On January 30, 2001, the Commission approved similar proposals submitted by the Chicago Board Options Exchange, Inc. (''CBOE'') and the International Securities Exchange LLC (''ISE''). *See* Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001). On February 20, 2001, the Commission issued a notice of filing and immediate effectiveness of a similar proposal submitted by the Pacific Exchange, Inc. (''PCX''). *See* Securities Exchange Act Release No. 43986 (February 20, 2001), 66 FR 12578 (February 27, 2001).

[5] Under the proposal, the interim linkage would be for a pilot period expiring on January 31, 2002.

and their counterparts on the other option exchanges as an interim step towards development of a ''permanent'' linkage.

The Commission has approved a linkage plan that now includes all five option exchanges.[6] The option exchanges continue to work towards implementation of this linkage. However, because the implementation may take a significant amount of time, the option exchanges have discussed implementing an ''interim'' linkage. Such a linkage would use the existing market infrastructure to route orders between market makers on the participating exchanges in a more efficient manner.

The key component of the interim linkage would for the participating exchanges to open their automated customer execution system, on a limited basis, to market maker orders. Specifically, market makers would be able to designate certain orders as ''customer'' orders, and thus would receive automatic execution of those orders on participating exchanges.

This proposed rule would authorize the Amex to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. The Exchange currently anticipates that the initial arrangements would allow Amex specialists and their equivalents on the other exchanges, when holding customer orders, to effectively send those orders to the other market for execution when the other market has a better quote. Such orders would be limited in size to the lesser of the size of the two markets' automatic execution size for customer orders. The interim linkage may be expanded to include limited access principal orders (*i.e.,* when the market maker is not holding a customer order), for orders of no more than 10 contracts. This access for principal orders will allow market makers to attempt to ''clear'' another market displaying a superior quote.

All interim linkage orders must be ''immediate or cancel'' (*i.e.,* they cannot be placed on an exchange's limit order book), and a market maker may send a linkage order only when the other (receiving) market is displaying the national best bid or offer and the sending market is displaying an inferior price. This will allow a market maker to access the better price for its customer. Any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their market makers send only properly-qualified orders through the linkage.

Specialist participation in the interim linkage will be voluntary. Only when a specialist and its equivalent on another exchange believe that this form of mutual access would be advantageous will the exchanges employ the interim linkage procedures. The Amex believes that the interim linkage will benefit investors and will provide useful experience that will help the exchanges in implementing the full linkage.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6).

The Exchange has requested that the Commission accelerate the operative date of the proposal. The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative today.[11]

The Commission finds good cause for accelerating the operative date of the proposed rule change. The Commission notes that it has approved similar proposals filed by the ISE and the CBOE.[12] Acceleration of the operative date should enable investors effecting transactions on the Amex to obtain better prices displayed on other exchanges and thus, is consistent with Section 6(b)(5) of the Act.[13]

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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it 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 Amex. All

[6] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* note 4, *supra.*

[13] 15 U.S.C. 78f(b)(5).

submissions should refer to SR–AMEX–2001–20 and should be submitted by June 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12133 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44258; File No. SR–CBOE–2001–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Prohibition Against Members Functioning as Market Makers

May 4, 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 April 12, 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 CBOE. The Exchange 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 Change

The CBOE proposes to adopt a new Rule 6.8C, *Prohibition Against Members Functioning as Market-Makers,* which restricts the entry of certain option limit orders. 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 Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE 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, Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 6.8C, *Prohibition Against Members Functioning as Market-Makers,* which will restrict the entry of certain option limit orders into the Exchange's electronic Order Routing System (''ORS''). The proposed new rule provides that member firms, acting as either principal or agent, may neither enter nor permit the entry of orders into ORS if the orders are limit orders for the account or accounts of the same beneficial owners and limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. In determining whether a beneficial owner effectively is operating as a market-maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same security; the multiple acquisition and liquidation of positions in the security during the same day; and the entry of multiple limit orders at different prices in the same security.

The Exchange states that its business model depends upon Designated Primary Market-Makers (''DPMs'') and market makers for competition and liquidity. To encourage participation by these market makers, the Exchange needs to limit the ability of members that are not DPMs or market makers to compete on preferential terms within its automated systems. In addition, because customers' orders are provided with certain benefits such as automatic execution, priority of bids and offers and firm quote guarantees, and customers should not be allowed to act as market makers. The proposed rule will prevent non-DPM/market maker members and their customers from reaping the benefits of market making activities without any of the concomitant obligations, such as providing continuous quotations during all market conditions. The proposed rule is designed to prevent certain members and customers from obtaining an unfair advantage by acting as unregistered DPMs and market makers by virtue of their customer status. Permitting members (other than DPMs or market makers) or customers to enter multiple limit orders to such an extent that they are effectively acting as market makers in an option, while not requiring them to fulfill the obligations imposed upon registered market makers, would give such members and customers an inordinate advantage over other market participants.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] Because the foregoing rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b(f)(6).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 C.F.R. 240.19b–4(f)(6).

not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter times as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6).

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provide the Commission with notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing of the proposed rule change.

The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become effective today.[8] The Commission has approved similar proposals filed by the other options exchange.[9] Approval of this proposal on an accelerated basis will enable the Exchange to compete on an equal basis with these other exchanges and thus is consistent with Section 6(b)(8) of the Act.[10]

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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–2001–20 and should be submitted by June 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12135 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competititon, and capital formation. 15 U.S.C. 78c(f).

[9] *See* Securities Exchange Act Release No. 43938 (February 7, 2001), 66 FR 10539 (February 15, 2001) (approving SR–Amex–01–03); and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving application of ISE for registration as a national securities exchange).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44281; File No. SR–NASD–00–69]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Establish a New Registration Category: Limited Representative—Private Securities Offerings (Series 82)

May 8, 2001.

I. Introduction

On November 28, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change seeking to amend rule 1032 of the NASD to establish a new registration category, Limited Representative—Private Securities Offerings (Series 82). The proposed rule change was developed to implement Section 203 of the Gramm-Leach-Bliley Act of 1999 (''GLBA''), which becomes effective on May 12, 2001.[3] NASD Regulation also proposed clerical changes to rule 1032, essentially replacing the word ''described'' for the word ''prescribed.'' NASD Regulation filed Amendment No. 1 to the proposed rule change on February 28, 2001.[4] Amendment No. 1 repalces the proposed rule change in its entirety. On March 14, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change.[5] Notice of the proposed rule change appeared in the **Federal Register** on March 28, 2001.[6] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NASD Regulation is proposing to amend Rule 1032 of the NASD to implement Section 203 of GLBA. Section 203 adds subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA (*i.e.,* from May 12, 1999 to November 12, 1999) engaged in effecting such sales shall not be required to pass a qualification examination in order to be deemed qualified in the limited registration category. Section 203 becomes effective on May 12, 2001.

GLBA also establishes functional regulation, meaning that each industry segment of a multi-industry organization will be regulated by the agency charged by law with the regulation of that industry. In connection with functional regulation, GLBA eliminates the long-standing general exclusion for banks from the definitions of ''broker'' and ''dealer'' under the Act and instead provides exclusions for certain bank activities. With respect to private placement activity, GLBA permits private placements to be effected in a bank (that is not a broker or dealer) where (a) the bank is not affiliated with a broker or dealer that is engaged in dealing, market

[1] 15 U.S.C. 78s(b)(1).

[2] 15 CFR 240.19b–4

[3] Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[4] *See* letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 28, 2001 (''Amendment No. 1''). Amendment No. 1 was filed to address SEC staff comments and to make certain clarifications.

[5] *See* letter from Gary L. Goldsholle, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 14, 2001 (''Amendment No. 2''). Amendment No. 2 was filed to address SEC staff comments and to make further clarifications.

[6] *See* Release No. 34–44091 (March 21, 2001), 66 FR 16964 (March 28, 2001).

making, or underwriting, other than with respect to exempted securities and (b), if the bank is not affiliated with any broker or dealer, the aggregate dollar amount of any private placement offering (excluding government or municipal securities) does not exceed 25% of the bank's capital. A bank that meets these conditions will be eligible to engage in private placement activities without having to register its personnel with the NASD. Notwithstanding this exclusion, many banks will be required to effect private securities offerings in a registered broker/dealer. For banks that are not excluded from the definition of ''broker,'' employees that effect sales of private securities offerings will be required to become associated persons of a registered broker/dealer, and as such, will be subject to NASD qualification examination and other requirements.

As part of the effort to facilitate a smooth transition of private placement activities from banks to broker/dealers, GLBA creates a new limited registration category for persons engaging solely in sales of private securities offerings. As noted above, while certain banks will still be permitted to engage in private securities offerings, many others will be required to effect these sales in a registered broker/dealer with appropriately registered personnel.

The proposed rule change effectuates the provisions of Section 203 by establishing a new registration category for persons engaged solely in sales of private securities offerings through a registered broker/dealer. Applicants seeking to register with the NASD under this limited registration category must meet the eligibility criteria for associated persons of a member in the NASD By-Laws and pass the necessary qualification examination. However, consistent with GLBA, the proposed rule change provides that any person who engaged in sales of private securities offerings as an employee of a bank during the period from May 12, 1999 to November 12, 1999, is not required to complete the qualification examination. An applicant seeking exemption from the qualification examination pursuant to this provision will be required to provide such evidence as NASD Regulation determines to be appropriate, demonstrating that he or she was engaged in effecting sales of private securities offerings at the bank during the period from May 12, 1999 to November 12, 1999.

The new limited registration category permits a person to effect sales of private securities offerings. However, the new limited registration category does not permit a person to effect sales of municipal or government securities or equity interests in or the debt of direct participation programs (''DPP securities''). Although sales of municipal securities and DPP securities may involve private securities offerings, NASD Regulation does not believe that the limited registration category should allow persons to sell such securities. Persons who effect sales of municipal securities, including bank employees, currently are required to be qualified in accordance with the rules of the Municipal Securities Rulemaking Board (''MSRB''). MSRB rules, among other things, require that persons pass a specific qualification examination. NASD Regulation does not believe that the new limited registration category was intended to create a subcategory of persons that are eligible to engage in certain offerings of municipal securities without meeting the specific qualification requirements of the MSRB.

Based upon conversations with SEC staff, NASD Regulation has included language in the proposed rule change to exclude from the scope of the limited registration category the ability to effect sales of private placements of government securities. With respect to government securities, NASD Regulation already offers a limited registration category for persons involved in the solicitation, purchase or sale of government securities.[7] Moreover, although neither NASD Regulation nor the SEC staff currently is aware of any private offerings of government securities, the SEC believes that it is important to exclude government securities from the limited registration category, similar to the exclusion for municipal securities given the manner in which these products are addressed in the GLBA.

The new limited registration category also does not qualify a person to engage in offerings of DPP securities. In general, DPP securities are specialized programs that provide for flow-through tax consequences. Any person who wishes to effect sales of DPP securities is required as a general securities representative or under a limited registration category for DPP securities.[8] Based upon conversations with banking industry representatives, NASD Regulation does not believe that unregistered bank employees generally effect sales of DPP securities. In view of the highly specialized nature of DPP securities, the existence of a limited registration category for such securities, and the general lack of experience in such securities by unregistered bank personnel, NASD Regulation does not believe that the new limited registration category should qualify an associated person to sell DPP securities. Moreover, by eliminating DPP securities from the scope of the new limited registration category, the qualification examination will not be burdened with questions on these highly specialized products. However, with respect to current bank employees who may be eligible to register under the new limited registration category without taking the qualification examination pursuant to paragraph (h)(2) of the proposed rule change, NASD Regulation staff has exemptive authority under NASD Rule 1070 and under such authority will consider on a case-by-case basis whether a bank employee with experience in DPP securities registering with a broker/dealer should be authorized to effect sales of DPP securities without having to complete the general securities representatives or specific DPP securities limited qualification examination.

The new limited registration category permits persons only to effect sales of private placement securities as part of a primary offering. As such, persons registered in this category will not be permitted to effect resales of or secondary market transactions in private placement securities. Any person wishing to effect resales of or secondary market transactions in private placement securities will be required to register as a General Securities Representative, or, where appropriate, as a Limited Representative—Corporate Securities.

NASD Regulation staff has developed a qualification examination and has filed the study outline and specifications with the Commission under separate cover.[9]

NASD Regulation also is making several clerical changes to Rule 1032, replacing the word ''described'' for the word ''prescribed.'' This change more accurately reflects the intended meaning of the affected paragraphs.

III Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Sections 15A(b)(6), 15A(g)(3), and 15A(j) of the Act.[10] Section 15A(b)(6)

[7] *See* NASD Rule 1032(g).

[8] *See* NASD Rule 1032(c).

[9] *See* Release No. 34–44228 (April 27, 2001), 66 FR 22624 (May 4, 2001).

[10] 15 U.S.C. 78o–3(b)(6), 78o–3(g)(3), and 78o–3(j) (the latter as enacted in 1999 through Section 203

Continued

requires, in relevant part, that the rules of a registered securities association be designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Section 15A(g)(3) provides that a registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if such broker or dealer does not meet the requisite levels of knowledge and competence. Section 15A(j) (as enacted) [11] provides that a registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, within the six month period preceding the date of the enactment of the GLBA, engaged in effecting such sales.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Sections 15A(b)(6), 15A(g)(3), and 15A(j) in particular.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, SR–NASD–00–69, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12134 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

of GLBA and effective on May 12, 2001. *See* note, 3, *supra.*)

[11] *See* note 10, *supra.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44280; File No. SR–NASD–2001–06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 3 and No. 4 by the National Association of Securities Dealers, Inc. Amending the NASD By-Laws

May 8, 2001.

I. Introduction

On January 18, 2001, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending the NASD By-Laws.[3] On February 5, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.[4] On February 26, 2001, the NASD submitted Amendment No. 2 to the proposed rule change.[5] The proposed rule change was published for comment in the **Federal Register** on March 6, 2001.[6] On April 20, 2001, the NASD submitted Amendment No. 3 to the proposed rule change.[7] On May 7, the NASD submitted Amendment No. 4 to the proposed rule change.[8]

The Commission received no comments on the proposal.[9] This order approves the proposed rule change, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendments No. 3 and No. 4 and is simultaneously approving Amendments No. 3 and No. 4 on an accelerated basis.

II. Description of the Proposal

In its proposed rule change, NASD proposed amendments to its By-Laws to address several corporate governance issues, including the treatment of staff Governors as ''neutral'' for purposes of Industry/Non-Industry balancing on the NASD's Board of Governors (the ''Board''); the role of the national Nominating Committee (''NNC'') in contested elections; the petition process by which individuals and slates can be included in the election process; the Industry classifications that must be represented on the Board; and other clarifying amendments, including the addition of certain definitions and changes to conform certain provisions of the NASD By-Laws to Delaware law and the deletion of terms that are no longer applicable. Additionally, the amendments reflect the new NASD corporate structure, including the creation of NASD Dispute Resolution, Inc., a wholly owned subsidiary of the NASD.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that NASD's proposal, as published in the Federal Register for notice and public comment, contained an erroneous filing date. The correct date on which NASD filed File No. SR–NASD–2001–06 with the Commission, as noted above, was January 18, 2001.

[4] Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 2, 2001 (''Amendment No. 1''). In Amendment No. 1 the NASD provided the final ballot summary of the membership vote regarding the proposed amendments to the NASD By-Laws, indicating that the NASD membership approved the proposed amendments.

[5] Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 23, 2001 (''Amendment No. 2''). In Amendment No. 2 the NASD amended proposed Article VII, Section 10(a)(ii) of the By-Laws to state ''(ii) in the case of petitions in support of more than one person, petitions in support of the nominations of such persons duly executed by ten percent of the members.''

[6] Securities Exchange Act Release No. 44004 (February 26, 2001), 66 FR 13601 (March 6, 2001).

[7] Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 19, 2001 (''Amendment No. 3''). In Amendment No. 3 the NASD amended proposed Article VII, Section 11(b) of the By-Laws to clarify its proposed rules regarding National Nominating Committee (''NNC'') participation in contested Board elections by stating that the NNC may support its nominees by sending up to two mailings on their behalf ''in lieu of mailings sent by its candidates under Article VII, Section 12.''

[8] Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated May 7, 2001 (''Amendment No. 4''). In Amendment No. 4, the NASD amended the following sections of its By-laws to remove proposed deletions to the term ''Nasdaq'' contained in its original filing: Article IV, Section 1(a)(1); Article V, Section 2(a)(1); Article VI, Section 1; Article VII, Section 1(c); Article XIII, Section 1(b); and Article XV, Section 4(b), In addition, NASD withdrew its proposed modification to Article VII, Section 3(a) in its entirety.

[9] The Commission was forwarded one item of email correspondence relating to the substance of this proposal. *See* email from Robert Glauber, CEO and President, NASD to Arthur Levitt, Chairman, Commission, on December 26, 2000, incorporating email from Alan Davidson, President, Independent Broker-Dealer Association, dated December 21, 2000, responding to the NASD's correspondence to its members about the proposed changes to its By-Laws referenced in this proposal. The commenter opposed the NASD's proposed rule change, as originally proposed, specifically the portion of the proposal allowing limited NNC participation in contested elections. The commenter argued that the purpose of the NNC is to nominate, not to use its official capacity to support candidates for the NASD Board. The commenter argued that the NASD Board was effectively manipulating the election process by allowing an appointed (as opposed to an elected) committee to campaign in favor of certain candidates.

The proposed rule change further implements the Restructuring Plan approved by NASD members on April 14, 2000.[10] The restructuring broadens the ownership in Nasdaq through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, and certain others. Prior to the private placement, the NASD owned 100 percent of Nasdaq. Now, after the closing of the second phase of the private placement, Nasdaq has numerous shareholders, but the NASD retains voting control over Nasdaq.[11] Regardless of the restructuring, the NASD and Nasdaq continue to be subject to the provisions and requirements of the NASD's August 8, 1996 settlement order with the Commission (''1996 Order'').[12]

Summary of Amendments

First, the NASD has proposed to reclassify the NASD Chief Executive Officer (''CEO'') and President of National Association of Securities Dealers Regulation, Inc. (''NASDR'') Governor positions as ''neutral'' Governors for Industry classification and compositional purposes. That is, under the proposal, the NASD CEO and the President of NASDR are neither Industry nor Non-Industry Governors. According to the NASD, the reclassification of these Governor positions as ''neutral'' is consistent with the neutrality classification other self-regulatory organizations assign to their Board staff members and allows the two Industry seats the staff occupy to now be available to Industry candidates elected by the NASD membership. In addition, the NASD believes that the reclassification of two staff Governor positions as ''neutral'' allows for a smaller, more efficient Board without compromising either the fair representation of NASD members or an appropriate balance of Industry and Non-Industry members.

Second, the proposed By-Law amendments allows limited National Nominating Committee participation in contested elections. Under the current By-Laws, the NASD, NASD staff, the NNC and other corporate committees are prohibited from taking a position in contested elections. As a result of this prohibition, in contested elections the NNC has been unable to explain the reasons a NNC nominated candidate is worthy of support and has been unable to respond to statements made by other candidates or parties about the NNC nominees. The NASD believes that the NNC's current inability to support its candidates in contested elections is a deterrent to qualified individuals accepting nominations. To remedy this, the NASD has proposed allowing the NNC to provide limited support to NNC nominated candidates. Specifically, the NASD proposal will allow the NNC to distribute two mailing to NASD voting members in support of its candidates.[13] The revised By-Laws also allow the NNC to respond in-kind to vote solicitations and additional mailings by other candidates. In this way, the NASD will allow the NNC to support its candidates but not allow the NNC to unilaterally wage an electoral campaign on behalf of those candidates.

Next, the NASD has elected to revise the NASD By-Laws with regard to inclusion on the ballot by petition. Under the current ballot by petition process, the By-Laws provide that a candidate—including slates of candidates—needs to obtain a petition signed by only three percent of the NASD membership. By presenting a slate of candidates to the NASD membership, one of the candidates on the slate can in effect ''coattail'' on the endorsement obtained by the other members of the slate. This result both frustrates the purpose of the petition-making process (to gauge the support of an individual NASD candidate) and treats individual candidates seeking nomination through petitions the same as a slate of candidates. Under NASD's proposed amendments, the NASD specifically recognizes the validity of slate petitions, but requires that the slate be endorsed by ten percent of NASD's voting members; individual candidates may continue to be nominated by obtaining a petition of three percent of the NASD membership. The NASD believes that NASD's adoption of separate thresholds for petition candidates and slate petitions is reasonable given the size and diversity of NASD's membership.

Fourth, to more accurately represent the full range of relevant Industry constituents, the NASD has proposed to add three Industry segments to the Board: a national retail firm, a regional retail or independent financial planning member firm, and a clearing firm. These segments are in addition to required representation by an investment company, an insurance affiliate, and a small firm. The Board will periodically adopt resolutions establishing the criteria for national and regional firm representatives in accordance with changes in the Industry structure and demographics.

Finally, to conform the NASD By-Laws to the new NASD corporate structure and the change in the NASD-Nasdaq relationship, the NASD has determined to make three categories of additional changes to the By-Laws. Frst, the NASD has proposed amendments reflecting the new corporate relationship between NASD and Nasdaq. For example, NASD's proposed changes to Article VII, Section 9 of its By-Laws reflect that the NASD Regulation and Nasdaq Boards no longer will propose candidates to the NASD Board for appointment to the NNC. Second, the NASD has proposed adding references to the newly formed NASD Dispute Resolution subsidiary and deleting references to Nasdaq where they are no longer applicable.[14] For example, in Article IV, Section 1 (which governs applications for membership), NASD has proposed to require that new members sign an agreement to comply with the By-Laws of ''NASD Dispute Resolution,'' among other laws, rules and By-Laws subject to the provision. Third, the NASD has suggested changes to conform the By-Laws to Delaware

[10] On June 26, 2000, the Commission approved a number of related changes to the Nasdaq By-Laws necessary to implement the restructuring and the recapitalization of Nasdaq. *See* Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000).

[11] Concurrent with the ongoing restructuring of Nasdaq, Nasdaq submitted an application to the Commission to register as a national securities exchange (''Form 1'') under Section 6 of the Act. Prior to its registration as a national securities exchange, however, Nasdaq will continue to operate under the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries (the ''Delegation Plan''), as approved by the Commission. *See* Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 16, 1996).

[12] *See* Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996).

[13] The Commission notes that Article VII, Section 12 of the current NASD By-Laws permits *candidates* themselves to distribute two such mailings using certain NASD administrative support services and indicating their NNC backing, if applicable. Under the NASD proposed amendment to Article VII, Section 11, NASD proposes to allow the *NNC* to initiate similar mailings on their candidates' behalf ''in lieu of mailings sent by its candidates pursuant to Article VII, Section 12.'' Although the provision authorizing candidates' mailings, Section 12, remains, these two types of mailings are mutually exclusive (*i.e.*, each candidate—or, alternatively, the NNC on the candidate's behalf—may initiate a maximum of two mailings.) *See* Amendment No. 3, *supra* note. 7.

[14] The Commission notes that the NASD has proposed deletions of the term ''Nasdaq'' from several provisions of its By-Laws, including the definitions of ''Industry Director,'' ''Non-Industry Director,'' ''Non-Industry Governor,'' and ''Public Director'' contained in Article I of the NASD By-Laws; for the purposes of this filing, however, the NASD has withdrawn its deletion of ''Nasdaq'' in certain other sections of its By-Laws (proposed in its original filing), as enumerated in Amendment No. 4. *See* note 8, *supra.*

law. For example, in Article VIII, Section 6, the NASD has proposed an amendment stating that a resolution for removal of officers of the NASD need not be in writing, consistent with Delaware law.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

The Commission has reviewed the NASD's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 15A of the Act[15] and the rules and regulations thereunder applicable to a national securities association.[16] Specifically, the Commission believes the proposal is consistent with sections 15A(b)(4) and (b)(6) of the Act.[17] Section 15A(b)(4) provides that the rules of an association must assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker or dealer.[18] Section 15A(b)(6) requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[19]

NASD's Proposed Reclassification of Two NASD Board Members as ''Neutral'' and Reduced Board Size

The NASD has proposed an amendment to its By-Laws to reclassify the NASD CEO and President of NASDR Governor positions as ''neutral'' governors; that is, neither Industry nor Non-Industry Governors. Section 15A(b)(4) of the Act[20] requires fair representation of an association's members in the selection of its directors and administration of its affairs, and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker or dealer. The fair representation requirement of section 15A(b)(4) helps to ensure that no particular constituency is subject to the unfair, unfettered actions of another constituency, and helps to ensure that the NASD is administered in a way that is equitable to NASD members.

The Commission finds that the proposed reclassification of the NASD CEO and NASDR Governor as ''neutral'' for Industry classification and compositional purposes is consistent with section 15A(b)(4) and with the 1996 Order. In particular, the Commission notes that the remainder of the NASD Board will continue to maintain a majority of Non-Industry/Public representation.[21] Moreover, as staff representatives of the NASD, the NASD CEO and NASDR Governor should represent the interest of the entire NASD organization, which includes Industry, Non-Industry, and Public representatives.

According to the NASD, reclassifying the NASD CEO and NASDR Governor also allows the NASD to reduce the size of the NASD board, and thus operate more efficiently, while continuing to satisfy the fair representation requirements of section 15A(b)(4) of the Act and the 1996 Order. The NASD has represented that by virtue of the corporate restructuring necessitated by the NASD's 1998 acquisition of the American Stock Exchange LLC, the NASD moved to an overlapping board structure whereby the members of the Nasdaq and NASDR Boards become members of the NASD Board, resulting in an increase in the number of ''Industry'' Governors (by virtue of their status as staff) on the NASD Board. Therefore, according to the NASD, it was forced to increase the number of ''Non-Industry'' seats as well in order to ensure fair representation of all constituencies; this ultimately resulted in a large, inefficient Board structure. The Commission believes that the NASD's proposed reclassification of two of its Governors as ''neutral'' is reasonable and may permit the NASD to reduce the size and increase the efficiency of the Board consistent with the requirements of the Act.

Nominating Committee Participation in Contested Elections

The NASD has proposed an amendment to its By-Laws lifting its current restriction on NNC participation in contested elections and allowing the NNC to provide limited support to NNC nominated candidates. Specifically, the NASD proposal would allow the NNC to distribute two mailings to NASD voting members in support of its candidates and to respond to contesting candidates' communications.

The Commission finds that the proposed amendment permitting the NNC to participate in contested elections under the limited terms proposed by the NASD is consistent with section 15A(b)(4) of the Act.[22] The NASD has represented that high-profile, public service-oriented candidates—exactly the sort of candidates that the NASD and its membership likely would support—are dissuaded from running for the NASD Board because they cannot receive any backing from the NNC. The Commission therefore believes that the NNC plays a critical role in the operation of the NASD by helping to ensure that qualified people serve on the NASD Board.

The Commission finds that it is reasonable to allow the NNC to have some limited involvement in providing assistance to candidates that the NNC has deemed to be appropriately qualified for the NASD board. This proposed change is consistent with section 15A(b)(4)'s fair representation requirement, in that it allows for sufficient involvement of the NNC is contested elections to lead to an informed dialogue among members about candidates for election to the NASD Board without unduly privileging NNC-supported candidates. The Commission notes that the NASD has carefully delineated the permissible actions that can be taken by the NNC. The nominees endorsed by the NNC currently are allowed to make use of administrative support by the NASD under Article VII, Section 12, a practice that will continue under the NASD's proposed amendments. The Commission notes that the NASD has preserved dissident candidates' ability, pursuant to that section, to distribute two such mailings using certain NASD administrative support services and indicating their NNC backing, if applicable. The only substantive change is evident in NASD's proposed addition of Article VII, Section 11(b), which allows the NNC to send directly to eligible NASD members two mailings in support of its candidates ''in lieu of'' mailings sent by the candidates themselves[23] and to ''respond in-kind'' to opposing candidates' mailings. The

[15] 15 U.S.C. 78o–3.

[16] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78o-3(b)(4), and (b)(6).

[18] 15 U.S.C. 78o–3(b)(4).

[19] 15 U.S.C. 78o–3(b)(6)

[20] 15 U.S.C. 78o-3(b)(4).

[21] The Commission notes that currently two other SROs, the New York Stock Exchange and the American Stock Exchange, operate pursuant to a similar ''neutral'' classification with regard to certain executives on their respective boards.

[22] 15 U.S.C. 78o–3(b)(4).

[23] *See* note 13, *supra.*

proposal does not allow the NASD Board to wage an all-out offensive on behalf of its candidates, as claimed by the commenter.[24] Therefore, the Commission finds that this proposed amendment permitting the NNC to participate in contested election under the measured terms proposed by the NASD is consistent with section 15A(b)(4) because, as proposed, it ensures fair representation by fostering dialogue among the NASD membership about candidates eligible for election to the NASD Board without giving unfair advantage to NNC-supported candidates.

Access to Ballot by Petition

The Commission further finds that changes to the petition process for individual nominees and a slate of nominees also is consistent with section 15A(b)(4)'s fair access requirement. Currently, the By-Laws provide that a candidate—including slates of candidates—needs to obtain a petition signed by only three percent of the NASD membership. By presenting a slate of candidates to the NASD membership, one of the candidates on the slate can in effect ''coattail'' on the endorsement obtained by the other members of the slate. This result both frustrates the purpose of the petition-making process (to gauge the support of an individual NASD candidate) and treats individual candidates seeking nomination through petitions the same as a slate of candidates. Therefore, the NASD's amendments, while continuing to recognize the validity of slate petitions, requires that the slate be endorsed by ten percent of the NASD's voting members. The NASD will retain the three percent standard for individuals. This modification is a reasonable attempt by the NASD to promote the fairness of its nomination process by limiting the ability of individual candidates to be nominated via a slate and without independent support, consistent with section 15A(b)(4) of the Act.

Industry Segment Representation

The NASD is proposing to amend Article VII, Section 4 of the NASD By-Laws to require representation by three additional Industry segments: a national retail firm, a regional retail or independent financial planning member firm, and a clearing firm, and to allow the Board, by resolution, to specify the criteria for representatives of national retail and regional retail or independent financial planning firms.

[24] *See* note 9, *supra.*

The Commission finds that this proposed change is consistent with sections 15A(b)(4) of the Act.[25] The Commission believes that this proposed amendment ensures that the NASD Board reflects the current constituencies of the securities markets and allows for representation by various categories of market participants within the NASD's membership ranks. Consequently, the Commission believes that NASD's proposal promotes fair representation, consistent with section 15A(b)(4).

Other changes

To conform the NASD By-Laws to the new NASD corporate structure and the change in the NASD-Nasdaq relationship, the NASD has determined to make three categories of additional changes to the By-Laws: (1) amendments reflecting the new corporate relationship between NASD and Nasdaq (*e.g.,* NASD's proposed changes to Article VII, Section 9 of its By-Laws reflect that the NASD Regulation and Nasdaq Boards no longer will propose candidates to the NASD Board for appointment to the NNC); (2) references to the newly formed NASD Dispute Resolution subsidiary and deleted references to Nasdaq where no longer applicable (*e.g.,* in Article IV, Section 1, NASD's proposal to add a reference to ''NASD Dispute Resolution'' in the membership agreement that must be signed by new NASD members);[26] (3) amendments to conform the NASD By-Laws to Delaware law (*e.g.,* in Article VIII, Section 6, NASD's proposed amendment stating that a resolution for removal of officers of the NASD must be in writing, consistent with Delaware law). The Commission finds that these proposed changes are consistent with section 15A(b)(6) of the Act[27] in that they accurately reflect the NASD's new corporate structure and conform to applicable law.

The Commission finds good cause for approving proposed Amendments No. 3 and No. 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendments No. 3 and No. 4 clarifies the proposed rule change. Because these amendments do not significantly alter the original proposal, which was subject to a full notice and comment period, the Commission finds that granting accelerated approval to Amendments No. 3 and No. 4 is consistent with section 19(b)(2) of the Act.[28]

[25] 15 U.S.C. 78o–3(b)(4).

[26] *See* note 14, *supra.*

[27] 15 U.S.C. 78o–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 3 and No. 4, including whether the proposed amendments are 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 at 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–2001–06 and should be submitted by June 5, 2001.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASD–2001–06), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12189 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

[28] 15 U.S.C. 78f(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44276; File No. SR–NSCC–2001–04]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Modify and Consolidate Clearing Fund Rules

May 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 24, 2001, the National Securities

[1] 15 U.S.C. 78s(b)(1).

Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 30, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC seeks to modify and consolidate its clearing fund rules. As more fully described below, NSCC proposes to apply its current clearing fund requirements for settling members on surveillance (Addendum O) to all members and, for ease of reference, incorporate these requirements as well as the clearing fund requirements found in Addendum B into NSCC's Procedure XV.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under current Addendum O,[3] NSCC collects additional clearing fund deposits from settling members on surveillance pursuant to a risk-based margining (''RBM'') methodology that includes, but is not limited to, calculations based on portfolio volatility and, where applicable, market maker domination. This rule filing would extend these RBM requirements to all NSCC members in lieu of Procedure XV's current allocation [Section A.I.(a)(i)(a)] and liquidation [Section A.I.(a)(i)(c)] clearing fund requirements.[4]

Since the Commission's approval of Addendum O in 1996, NSCC has studied the impact of RBM on member firms. NSCC found that utilization of RBM more accurately reflects NSCC's exposure than the current allocation and liquidation formulae because it enables NSCC to more precisely identify the risks posed by a member's unsettled portfolio and, as a result, more quickly adjust and collect additional clearing fund requirements. NSCC management therefore recommended, and the Membership and Risk Management Committee concurred, that RBM methodologies should be applied to all NSCC members, not just those on surveillance.

This rule change will modify Procedure XV as follows:

- With respect to clearing fund requirements for CNS transactions, Procedure XV's allocation [current Section A.I.(a)(i)(a)] and liquidation [current Section A.I.(a)(i)(c)] formulae will be replaced with RBM methodology, specifically volatility [new Section I.(A)(1)(a)] and market maker domination [new Section I.(A)(1)(c)] calculations, currently found in Addendum O. The volatility formula will continue to permit the NSCC to utilize any generally accepted portfolio volatility model to calculate volatility.
- In addition, the rule will continue to provide that NSCC may exclude from volatility calculations net unsettled positions in classes of securities whose volatility is (1) less amenable to statistical analysis, such as OTC Bulletin Board or Pink Sheet issues or issues trading below a designated dollar thresthold (*e.g.*, five dollars), or (2) amenable to generally accepted statistical analysis only in a complex manner, such as municipal or corporate bonds. The amount of clearing fund required with respect to these net unsettled positions will be determined by multiplying the absolute value of the net unsettled positions by a percentage designated by NSCC. This percentage will not be less than 10% with respect to the positions covered by item (1) above and will not be less than 2% with respect to the positions covered by item (2) above.
- The clearing fund requirements for all when-issued and when-distributed transactions will be consolidated with the calculations for regular way transactions.
- The third prong of the CNS formula, the calculation of the difference between the contract price and the current market price of compared pending positions, will remain the same [current Sections I.(A)(i)(b) and I.(A)(2)(b)]; however, these calculations will be undertaken on a daily basis.
- All clearing fund and other deposit requirements will be required to be made by members within one hour of demand. However, to the extent a member is meeting its obligation with: (1) a deposit of cash, the cash deposit must be made by Federal Funds wire transfer and must be received no later than fifteen minutes prior to the close of the Federal Funds wire and (2) a delivery of eligible securities, the delivery of eligible securities must be received within the deadlines established by a qualified securities depository.[5] The proposed rule further provides that, at the discretion of NSCC, these cash deposits may be included as part of the member's daily settlement obligation.
- Addendum B, among other things currently specifies thresholds pursuant to which NSCC will require additional clearing fund contributions. Procedure XV [new Section II.(C)] will now provide that additional clearing fund deposits shall not be requested where the amount of the deficiency for a: (1) Member on Class A or B Surveillance is equal to or less than $5,000 and such amount is less than 5% of such member's actual deposit; (2) member on Advisory Surveillance is equal to or less than $20,000 and such amount is less than 5% of such member's actual deposit; or (3) member not on any surveillance is equal to or less than $50,000 and such amount is less than 10% of the member's actual deposit.
- Other changes to Procedure XV result from relabeling and/or moving the placement of NSCC's clearing fund requirements without altering their substantive nature.

As described below, NSCC intends, subject to Commission approval, to begin implementing the proposed clearing fund changes on June 15, 2001, and to conclude by December 31, 2002.

Subject to Commission approval, members currently subject to Addendum O will be subject to these clearing fund changes on June 15, 2001. Applicants approved for NSCC membership from and after April 24, 2001, the date of this filing, will also be

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Addedum O was temporarily approved by the Commission in 1996 and approval has been extended consecutively on a temporary basis. Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–93–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; 40034 (May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03]; 41478 (June 4, 1999), 64 FR 31664 [File No. SR–NSCC–99–06]; 42864 (May 30, 2000), 65 FR 36204 [File No. SR–NSCC–99–09] (Commission approval date corrected in *Federal Register,* 65 FR 42065); and 44277 (May 8, 2001) [File No. NSCC–2001–05] (notice of filing and order granting accelerated approval of Addendum O through December 31, 2002).

[4] Procedure XV contains NSCC's clearing fund formulas.

[5] Under NSCC rules the only qualified securities depository is DTC.

immediately subject to these rule changes on June 15, 2001. Members who have a position which will subject them to a deposit requirement based on the market domination calculations will also be subject to these rule changes on June 15, 2001. NSCC will place every remaining member into deciles and will apply the revised clearing fund methodologies pursuant to a step-by-step, decile-by-decile plan based upon the volatility classification of each such member's unsettled portfolio. Accordingly, members with the most volatile portfolios will be subject to these rule changes first, on or shortly after June 15, 2001, provided, however, that to the extent any such member has significant CNS obligations resulting from options exercises and assignments or is a municipal securities brokers' broker, it will be subject to these rule changes in conjunction with or [6] after all other members but in no event later than December 31, 2002.[7]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder applicable to NSCC because it will permit NSCC to assure the safeguarding of funds and securities for which it is responsible by allowing NSCC to more appropriately collect collateral to cover members' exposures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2001–04 and should be submitted by June 5, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12136 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

[6] The April 27, 2001 amendment to the rule filing added the language ''in conjunction with or'' to the filing.

[7] NSCC will keep effective all rules affected by this filing until all members are subject to the revised rules.

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44277; File No. SR–NSCC–2001–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to Additional Procedures for Class A Surveillance of Certain Settling Members and to the Collection of Clearing Fund and Other Collateral Deposits from These Settling Members

May 8, 2001.

Pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 24, 2001, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through December 31, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the temporary approval of additional procedures that govern the placement of NSCC members of Class A surveillance and the clearing fund deposit and other collateral requirements for such members until NSCC's proposed rule change, SR–NSCC–2001–04, is phased in. [2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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

[1] 15 U.S.C. 78s(b)(1).

[2] In NSCC–2001–04, which is subject to Commission approval, NSCC proposes to apply its current clearing fund requirements for settling members on surveillance (Addendum O) to all NSCC members and to incorporate those requirements as well as all the clearing fund formulae and requirements currently found in Addendum B into NSCC's Procedure XV. The phase in of the new procedures under SR–NSCC–2001–04 will begin June 15, 2001, and will end no later than December 31, 2002. *See* Securities Exchange Act Release No. 44276 (May 8, 2001) [File No. NSCC–2001–04] (notice of filing of proposed rule change to modify and consolidate clearing fund rules).

may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. [3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of Addendum O, which governs the application of Class A surveillance procedures and the additional collateralization requirements for settling members that engage in certain over-the-counter (''OTC'') market making activities. Addendum O is designed to decrease the risks associated with OTC market makers by use of Class A surveillance and special collateralization procedures. The Commission originally granted temporary approval on May 10, 1996, and has subsequently extended its approval through May 31, 2001. [4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder because the surveillance and additional collateralization procedures will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; 40034 (May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03]; 41478 (June 4, 1999), 64 FR 31664 [File No. SR–NSCC–99–06]; and 42864 (May 30, 2000), 65 FR 36204 [File No. SR–NSCC–99–09] (Commission approval date corrected in **Federal Register,** 65 FR 42065).

[5] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest.[6] As the Commission previously stated, it finds that NSCC's proposed rule change is consistent with these obligations under the Act because it should help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.[7]

Under the proposal, NSCC will continue to have the authority with respect to members which participate in OTC market making activities or clear for correspondents that engage in such activity to (1) place such members on Class A surveillance, (2) requires such members to post additional collateral with NSCC, and (3) calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure, which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control or is responsible and to protect investors and the public interest.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption when the previous temporary approval expires on June 1, 2001, and until NSCC's proposed rule change, SR–NSCC–2001–04, is completely phased in.

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 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2001–05 and should be submitted by June 5, 2001.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NSCC–2001–05) be and hereby is approved through December 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12138 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Supra* note 4.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44272; File No. SR–NYSE–2001–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Provide for an Allocation Policy for Exchange-Traded Funds Trading on an Unlisted Trading Privileges Basis

May 7, 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 April 25, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 7, 2001, the NYSE field

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and, for the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change, as amended, on a pilot basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend its Allocation Policy and Procedures (''Policy)[4] to provide for the allocation of exchange-traded funds (''ETFs'') listed and traded on the Exchange pursuant to unlisted trading privileges (''UTP'').

Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Policy for Allocation of Exchange-Traded Funds Admitted to Trading on the Exchange on an Unlisted Trading Privileges Basis

Exchange-traded funds (''ETFs'') (as defined in paragraph 703.16 of the Listed Company Manual) admitted to trading on the Exchange on an unlisted trading privileges basis shall be allocated pursuant to this Policy rather than the Exchange's policy for allocating securities to be listed on the Exchange.

ETFs shall be allocated by a special committee consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This committee shall solicit allocation applications from interested specialist units, and shall review the same performance and disciplinary material with respect to specialist unit applicants as would be reviewed by the Allocation Committee in allocating listed stocks. The committee shall reach its decisions by majority vote with any tie votes being decided by the Chairman of the Exchange. Specialist unit applicants shall not appear before the committee.

Special Criteria

In their allocation applications, specialist units must demonstrate:

(a) an understanding of the trading characteristics of ETFs;

(b) expertise in the trading of derivatively-priced instruments;

(c) ability and willingness to engage in hedging activity as appropriate;

(d) knowledge of other markets in which the ETF to be allocated trades;

(e) willingness to provide financial and other support to Exchange marketing and educational initiatives with respect to the ETF to be allocated.

Allocation Freeze Policy

The Allocation Freeze Policy as stated in the Allocation Policy for listed stocks shall apply.

Prohibition on Functioning as Specialist in ETF and Specialist in any Component Security of the ETF

No specialist member organization may apply to be allocated an ETF if it is registered as specialist in any security which is a component of the ETF. A specialist member organization which is registered as specialist in a component stock of an ETF may establish a separate member organization which may apply to be the specialist in an ETF. The approved persons of such ETF specialist member organization must obtain an exemption from specified specialist rules pursuant to Rule 98.

If, subsequent to an ETF being allocated to a specialist member organization, a security in which the specialist member organization is registered as specialist becomes component security of such ETF, the specialist organization must (i) withdraw its registration as specialist in the security which is a component of the ETF; (ii) withdraw its registration as specialist in the ETF; or (iii) establish a separate specialist member organization, which will be registered as specialist in the ETF and whose approved persons have received an exemption from specified specialist rules pursuant to Rule 98.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its overall business strategy, the Exchange believes that it is appropriate to trade ETFs on the NYSE Floor. In December 2000, the Exchange began trading an ETF on the S&S Global 100 (symbol IOO).[5] The Exchange intends to trade additional ETFs listed by other ETF sponsors.

The Exchange believes it would be appropriate to trade on the NYSE, on a UTP basis, certain other ETFs currently listed and trading on other markets. These ETFs may include the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depository Receipts (symbol SPY) and the DOW Industrials DIAMONDS (symbol DIA).

It should be noted that UTP ETFs will trade at a post separate from ay other type of security trading on the Exchange.

Allocation Policy for ETFs Trading Pursuant to UTP. The intent of the Exchange's current Policy is: (1) to ensure that the allocation process is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

The Allocation Committee has sole responsibility for the allocation of securities to specialist units under this Policy pursuant to authority delegated by the Board of Directors, and is overseen by the Quality of Markets Committee of the Board. The Allocation Committee renders decisions based on the allocation criteria specified in this Policy.

The Exchange believes that it would be appropriate to modify the conventional allocation process to provide that ETFs traded on a UTP basis be allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior floor broker members of the

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sapna Patel, Attorney, Division of Market Regulation, Commission, dated May 4, 2001 (''Amendment No. 1''). In Amendment No. 1, the NYSE made a minor technical change to the proposed rule text clarifying that an approved person of a separate specialist organization must have received an exemption from specified specialists rules pursuant to NYSE Rule 98.

[4] NYSE's current Policy was amended in Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2001) (File No. SR–NYSE–99–34). *See* Exhibit A to File No. SR–NYSE–99–34 for a copy of NYSE's Policy.

[5] *See* Securities Exchange Act Release No. 43658 (December 1, 2000), 65 FR 77408 (December 11, 2000) (notice of filing and order granting accelerated approval to File No. SR–NYSE–00–53).

Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This will permit Exchange management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE.

Allocation applications would be solicited by the Exchange and this special committee would review the same performance and disciplinary material as is reviewed by the Allocation Committee.[6] In addition, specialist unit applicants would be required to demonstrate:

(a) An understanding of the trading characteristics of ETFs;
(b) Expertise in the trading of derivatively-priced instruments;
(c) Ability and willingness to engage in hedging activity as appropriate;
(d) Knowledge of other markets in which the ETF which is to be allocated trades;
(e) Willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

The special committee would review specialist unit applications and reach its allocation decision by majority vote. Any tie vote would be decided by the Chairman of the Exchange. Specialist units would not appear before the special committee.

Restriction on a Specialist Member Organization Acting as a Specialist in the ETF and in a Component Security of the ETF. Under the proposed rule change, specialist member organization cannot be both the specialist in the ETF and the specialist in any security that is a component of the ETF. This restriction is necessary to avoid the possibility of ''wash sales'' in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security. A specialist member organization registered in a component security of the ETF may use a separate affiliated member organization to function as the ETF specialist, and thereby avoid the ''wash sale'' issue. The affiliated member organization that acts as the ETF specialist would be required to establish information barriers between itself and the specialist member organization, pursuant to NYSE Rule 98.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

More specifically, the Exchange believes that trading ETFs on a UTP basis will provide investors with increased flexibility in satisfying their investment needs because they will be able to purchase and sell a security that replicates the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

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 that is not necessary or appropriate in the 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 NYSE. All submissions should refer to File No. SR–NYSE–2001–07 and should be submitted by June 5, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[10] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[12] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an initiative to strive for optimal performance. The Exchange now proposes to amend its Policy to account for the allocation of ETFs listed and traded on the Exchange on a UTP basis.

The Commission notes that the Exchange proposes to establish a special committee to allocate ETFs listed and traded on a UTP basis. The special committee will consist of the Chairman of the Allocation Committee, the three most senior floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the

[6] *See* Section IV, Allocation Criteria, of the Policy. *See supra* note 4.

[7] With respect to ETFs, NYSE has proposed to amend its Rule 98 information barriers to eliminate the requirement that approved persons of specialist member organizations be capitalized separately from the specialist member organization. However, a specialist member organization that is registered only in ETFs will remain subject to the minimum capital requirements as specified in Exchange Rules. In addition, NYSE has proposed to amend NYSE Rules 36, 105(1), 111, 13, 104.21, as well as the NYSE's Market-On-Close/Limit-At-The-Close and Pre-Opening Price Indications Policies to accommodate the trading of ETFs on a UTP basis. *See* File No. SR–NYSE–2–001–08, filed by the NYSE with the Commission on April 25, 2001.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b). In approving this proposal on an accelerated basis, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* 17 CFR 240.11b–1; NYSE Rule 104.

Chairman of the Exchange. The Exchange believes that this will permit its management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. The Commission believes that it is appropriate to establish a new allocation committee for ETFs because of the unique characteristics of ETFs, which should be considered in the allocation process.

The Exchange proposes that member organizations applying to trade ETFs on a UTP basis be able to demonstrate certain abilities in addition to the current performance and disciplinary requirements of the allocation application. For example, the applicant must have: (a) an understanding of the trading characteristics of ETFs; (b) expertise in the trading of derivatively-priced instruments; (c) the ability and willingness to engage in hedging activity as appropriate; (d) the knowledge of other markets in which the ETF which is to be allocated trades; and (e) the willingness to provide financial and other support to relevant Exchange publicity and educational initiatives. The Commission finds that these criteria are suitable for the Committee to rely on when allocating an ETF to a particular specialist unit.

In addition, the Exchange proposes to prohibit a specialist in any component security of the ETF to function as a specialist in the ETF in order to avoid ''wash sales.'' The Exchange, however, proposes to allow specialists in a component security of an ETF to use a separate member organization to function as an ETF specialist so long as NYSE Rule 98 information barriers are established and approved by the Exchange. The Commission believes that NYSE Rule 98 information barriers should prevent the flow of any privileged and/or nonpublic information between the related entities and should reduce the potential for any concerns regarding ''wash sales'' in this context.

Because the proposed rule change, as amended, institutes a new process for allocating ETFs to NYSE specialist units and because the Commission is adopting the proposal on an accelerated basis, the Commission believes that the proposal should be approved on a pilot basis, for a one-year period ending on May 7, 2002, to ensure that the process is effective and fair. The Commission expects the NYSE to report to the Commission about its experience with the new allocation process in any future proposal it files to extend the amendment to the Policy or approve it on a permanent basis.

The Commission, pursuant to Section 19(b)(2) of the Act,[13] finds good cause for approving the proposed rule change and Amendment No. 1 thereto, on a one-year pilot basis through May 7, 2002, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that granting accelerated approval to this proposal will allow the NYSE to immediately implement a process for allocating ETFs to be traded on the Exchange on a UTP basis to specialist units. It is necessary to allocate the ETFs to specialist units as soon as possible so that the specialists so appointed will have ample time to prepare for NYSE's upcoming listing and trading of ETFs on a UTP basis. Amendment No. 1 simply makes minor technical corrections to the proposed rule text and clarifies that approved persons of a specialist must be granted an exemption from specified specialist rules pursuant to NYSE Rule 98.

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2001–07), as amended, is hereby approved on an accelerated basis through May 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12137 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44285; File No. SR–Phlx–2001–02]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Codifying Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

May 9, 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 January 11, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Phlx filed amendment Nos. 1[3] and 2[4] to the proposed rule change on February 21, 2001 and May 2, 2001, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1009 to codify and implement procedures to be carried out when an Exchange member, member organization, or other person requests that the Exchange list options not currently traded on the Exchange. The proposed rule change is set forth below. New text is in italics.

* * * * *

Criteria for Underlying Securities

Rule 1009. (a)–(c) No change.

Commentary

.01 No change

.02 *(a) Members, member organizations or any person proposing to list any option not currently listed on the Exchange shall submit a form of request (a ''Request to List an Option''), available from the Exchange's Business and Operations Planning Department (BOP), to BOP staff.*

(b) As soon as practicable, but not later than three (3) business days following receipt of the Request to List an Option, BOP staff shall review the proposed option's eligibility for listing, using the objective listing criteria set forth in Commentary .01 of this Rule. If BOP staff determines that the proposed option does not meet the objective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 20, 2001 (''Amendment No. 1''). Among other things, Amendment No. 1 clarifies that the Exchange: (i) may consider bona fide business interests in determining whether to list an option; (ii) must send letters to members setting forth in reasonable detail the basis on which a decision not to list a proposed option was made; and (iii) must forward its written response within 3 business days of its determination to deny a proposed listing.

[4] *See* letter from Richard Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2001 (''Amendment No. 2''). Amendment No. 2 revises Section (c)(ii) of proposed Commentary .02 to Phlx Rule 1009 to clarify that the Exchange must notify the member in writing if the Exchange determines not to list, or to place conditions or limitations upon, a proposed listing. Amendment No. 2 also amends Section (e) of proposed Commentary .02 to clarify that the Exchange will maintain a record of any bona fide business interests supporting a decision not to list, or to place conditions or limitations upon, a proposed listing.

listing criteria set forth in Commentary .01 of this Rule, BOP staff shall prepare a responsive form (a ''Notification Memorandum'') stating the reason(s) why the proposed option is not eligible for listing. BOP staff shall forward the Notification Memorandum to the member or member organization that submitted the Request to List an Option within three (3) business days of its determination that the proposed option does not meet objective listing criteria. BOP staff shall maintain all Requests to List an Option and Notification Memoranda in a central file for a period of not less than five (5) years.

(c) If BOP staff determines that the proposed option meets the objective listing criteria set forth in Commentary .01 of this Rule, BOP staff shall present the initial Request to List an Option and the subsequent review to the Chairman of the Board of Governors or his designee, who shall, within ten (10) business days of receipt of the Request to List an Option, instruct BOP staff to:

(i) solicit options specialists to submit applications for specialist privileges in the option; or

(ii) within three (3) business days, prepare and forward a letter to the member or member organization that submitted the Request to List an Option, setting forth in reasonable detail the basis on which the decision not to list, or to place limitations or conditions upon, the proposed option was made.

(d) In considering underlying securities, the Exchange shall ordinarily rely on information made publicly available by the issuer and/or the markets in which the security is traded.

(e) In determining whether to list an option that otherwise meets objective listing criteria, the Chairman of the Board of Governors or his designee may consider such factors as the Exchange's current and projected computer capacity, and the current and projected demands for that capacity, including telecommunications and Option Price Reporting Authority (''OPRA'') inbound and outbound message capacity or message volume restrictions placed on the Exchange by OPRA; the projected likely number of series and open interest in the option; the projected likely volatility of the option; the projected likely liquidity of the option; name recognition of the option or underlying security; the projected volume of trading in the option that is likely to occur on the Exchange; the projected share of total trading in the option that is likely to occur at the Exchange; whether any intellectual property right or license thereof exists with respect to the option; whether the proposal is consistent with Exchange rules and/or the Securities Exchange Act of 1934 and the rules, regulations, and orders thereunder; whether unusual or unfavorable market conditions exist with respect to the option; and whether it is in the bona fide business interest of the Exchange to list the option. If, in denying a request or approving a request subject to conditions or limitations, the Exchange relies upon a factor of other bona fide business interests, the Exchange shall, in addition to providing the member with a written response specifying that the Exchange has relied upon other bona fide business interests, maintain a record of the bona fide business interests supporting its decision.

.03–.05 No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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 establish a procedure to be followed when an Exchange member requests the Exchange to list options not currently traded on the Exchange.[5] The proposed changes to Commentary .02 to Exchange Rule 1009 address member requests to list options and would apply to members and member organizations. In a separate filing, the Exchange also proposes to include these procedures in the Exchange's Codes of Conduct[6] so that these procedures would be applicable to, and violations thereof enforceable against, Exchange officers, directors, governors, employees, committee members, or agents.

The proposed rule change would require members, member organizations or any person proposing to list any option not currently listed on the Exchange to submit a form of request (''Request to List an Option''), available from the Exchange's Business and Operations Planning Department (''BOP''), to BOP staff. The purpose of this provision is to provide a uniform process, format, and record of requests for the listing of options not currently listed on the Exchange.

As soon as practicable, but not later than three business days following receipt of the Request to List an Option, BOP staff would be required to review the proposed option's eligibility for listing, using the objective listing criteria for underlying securities set forth in Commentary .01 of Phlx Rule 1009 for equity options, and the objective criteria set forth in Exchange Rule 1009A for underlying securities for index options.

The three-day period within which the BOP staff must review the Request to List an Option is intended to provide a reasonably prompt timeframe within which to determine if the securities underlying the proposed option meet the Exchange's objective listing criteria. If the BOP staff determines that the securities underlying the proposed option do not meet the objective listing criteria set forth in Commentary .01, they would be required to prepare a responsive form (a ''Notification Memorandum'') stating the reason(s) why the requested option is not eligible for listing. BOP staff would be required to forward the Notification Memorandum to the member or member organization that submitted the Request to List an Option within three days of the determination that the requested option does not meet the objective listing criteria. This provision is intended to provide a prompt response to the requesting member or member organization of the requested option's ineligibility for listing based on the Phlx's listing standards. The Exchange would be required to maintain all Requests to List an Option and Notification Memoranda in a central file for at least five years.[7]

A determination by the BOP staff that the securities underlying a proposed option meet objective listing criteria

[5] As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Phlx, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[6] *See* Securities Exchange Act Release No. 44057 (March 9, 2001), 66 FR 15312 (March 16, 2001) (SR–Phlx–01–03).

[7] *See* Securities Exchange Act Rule 17a–1(b). The Exchange would be required to maintain these records for the first two years in an easily accessible location.

would not require the Exchange to list the option. The proposed rule contemplates a variety of legitimate business reasons why the Exchange would choose not to list certain proposed options. If BOP staff determines that the proposed option meets the Exchange's objective listing criteria set forth in Commentary .01 of Phlx Rule 1009, BOP staff would be required to present the proposal to the Chairman of the Board of Governors or his designee [8] within ten business days of the determination. The Chairman or his designee would be required to instruct BOP staff either to: (i) Solicit options specialists to submit applications for specialist privileges in the option; or (ii) within three business days, prepare and forward a letter to the member that submitted the listing proposal, setting forth in reasonable detail the basis on which the decision not to list, or to place limitations or conditions upon, the proposed option was made. These letters would be maintained in a central file for a period of not less than five years. If the Exchange decides to list the requested option, it would forward a Notification Memorandum advising the requesting member that they will be notified when applications for trading privileges in the requested option are solicited.

In determining whether to list an option that otherwise meets objective listing criteria, the Chairman of the Board of Governors or his designee would consider: (i) The Exchange's current and projected computer capacity or message volume restrictions placed on the Exchange by the Option Price Reporting Authority (''OPRA''), and the current and projected demands for that capacity, including telecommunications and OPRA inbound and outbound message capacity; (ii) the projected likely number of series and open interest in the option; (iii) the projected likely volatility of the option; (iv) the projected likely liquidity of the option; (v) name recognition of the option or underlying security; (vi) the projected volume of trading in the option that is likely to occur on the Exchange; (vii) the projected share of total trading in the option that is likely to occur on the Exchange; (viii) whether any intellectual property right or license thereof exists or would be required with respect to the option; (ix) whether the proposal is consistent with Exchange rules and/or the Act and the rules, regulations, and orders thereunder; (x) whether unusual or unfavorable market conditions exist with respect to the option; and (xi) whether it is in the *bona fide* business interest of the Exchange to list the option. If, in denying a request or approving a request subject to conditions or limitations, the Exchange relies upon a factor of other bona fide business interests, the Exchange would be required, in addition to providing the member with a written response specifying that the Exchange has relied upon other bona fide business interests, to maintain a record of the bona fide business interests supporting its decision. According to the Phlx, the proposed provisions codify the list of legitimate business concerns normally reviewed when the Exchange makes a decision about whether to list an option that otherwise meets its listing criteria.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general and furthers the objectives of Section 6(b)(5) [10] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest by providing a uniform process for members to submit, and the Exchange to review, listing proposals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any burden on competition 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

The Phlx did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 filings will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–2001–02 and should be submitted by June 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12132 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–M

[8] Such designee may be a member of the Exchange's Board of Governors or a member of the Exchange's Senior Staff.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3661]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Wednesday June 13, 2001, in room 6103, U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is to prepare for the 47th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 2–6, 2001, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting and related matters

—Integrated bridge systems (IBS) operational aspects
—Guidelines relating to the International Convention for the Safety of Life at Sea (SOLAS) chapter V
—Training and certification of maritime pilots and revision of resolution A.485(XII)
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU-R Study Group 8
—Effective voyage planning for large passenger vessels

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MWV–2, Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: May 7, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 01–12210 Filed 5–14–01; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1530).

TIME AND DATE: 9 a.m. (CDT), May 17, 2001.

PLACE: Whispering Woods Hotel and Conference Center Amphitheater, 11200 East Goodman Road, Olive Branch, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 18, 2001.

New Business

C—Energy

C1. Supplement to Contract No. 98NNX–224696 with Pinkerton Government Services, Inc., for security services.

C2. Supplement to contract with Haefely Trench for coupling capacitor voltage transformers, gas transformers, and line traps for Transmission/Power Supply.

C3. Supplement to Contract No. 99PPW–235218–002 with Alstom Power, Inc., Environmental Systems Division to design, manufacture, and deliver selective catalytic reduction process equipment for any TVA Fossil Plant.

C4. Supplement to Contract No. 99PPW–235218–001 with Cormetech, Inc., to design, manufacture, and deliver selective catalytic reduction catalyst for any TVA Fossil Plant.

E—Real Property Transactions

E1. Grant of a permanent easement for a sewerline to the Town of Centerville, Tennessee, affecting approximately 0.19 acre and a temporary construction easement affecting approximately 0.10 acre of the Centerville Line Crew Headquarters property in Hickman County, Tennessee, Tract No. XCVCH–1S.

E2. Sale of a noncommercial, nonexclusive permanent easement to Edward and Karen Wendling for construction, operation, and maintenance of recreational water-use facilities, affecting 0.1 acre of Tellico Reservoir shoreline in Loudon County, Tennessee, Tract No. XTELR–221RE.

E3. Grant of a permanent easement for a highway improvement project, without charge, except for payment of TVA's administrative costs, to the State of Tennessee, affecting approximately 0.08 acre of TVA land on Chickamauga Reservoir in Meigs County, Tennessee, Tract No. XTCR–198H.

E4. Grant of a permanent easement for a highway improvement project affecting approximately 2.56 acres of TVA land on Fontana Reservoir in Swain County, North Carolina, Tract No. XTFR–13H.

F—Other

F1. Approval to file condemnation cases to acquire easements and rights-of-way in Catoosa and Whitfield Counties, Georgia, for the West Ringgold-Center Point Transmission Line.

Information Items

1. Renegotiation of Contract No. P00P07–261998 with Cumberland River Energies, Inc., for coal supply to Bull Run Fossil Plant implementing agreement reached under a reopener of the contract.

2. Approval of David L. Babson & Company, Inc., and David J. Greene & Company, L.L.C., as new investment managers for the TVA Retirement System and approval of the Investment Managements Agreement between the Retirement System and the new investment managers.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: May 10, 2001.

Charles L. Young,

Assistant General Counsel and Assistant Secretary.

[FR Doc. 01–12359 Filed 5–11–01; 1:59 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on May 22, 2001, from 9 a.m. to 12 noon. The meeting will be opened to the public from 9 a.m. to 9:45 a.m. and closed to the public from 9:45 a.m. to 12 noon.

DATES: The meeting is scheduled for May 22, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC, Conference Room 6057.

FOR FURTHER INFORMATION CONTACT: Karen Holderman (202) 482–0345, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (principal contact), or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the meeting the following topics will be addressed:

- Requirements for Environmental Review of the WTO General Agreement on Trade in Services (GATS) Negotiations.
- Preparations for the WTO Ministerial Meetings in Qatar, November 2001.
- Proposed Changes in the Bureau of Economic Analysis Survey on International Services Transactions.
- Capacity Building to Improve Services Trade Statistics.

Heather K. Wingate,

Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–12143 Filed 5–14–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending April 27, 2001

The following Agreements were filed with the Department of Transportation under provisions of 29 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–9514.
Date Filed: April 23, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0106 dated 26 March 2001 (Mail Vote 120), Mid Atlantic-Africa Resolutions r1–r10, PTC12 NMS–AFR 0112 dated 20 April 2001 adopting Mail Vote 120, Description of Agreement (Not applicable to/from USA, US Territories), PTC12 NMS–AFR 0108 dated 30 March 2001, South Atlantic-Africa Resolutions r–11–r24, PTC12 NMS–AFR 0113 dated 20 April 2001 Technical Correction, Minutes—PTC12 NMS–AFR 0107 dated 30 March 2001 filed with Docket OST–01–9499, Tables—PTC12 NMS–AFR Fares 0059 dated 6 April 2001, PTC12 NMS–AFR Fares 0062 dated 20 April 2001, Intended effective date: 1 May 2001.

Docket Number: OST–2001–9568.
Date Filed: April 26, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC AFR 0106 dated 24 April 2001, Mail Vote 123—Resolution 010z R1–R5, TC2 Within Africa Special Passenger Amending Resolution from Zimbabwe to Zambia, Intended effective date: 15 May 2001.

Docket Number: OST–2001–9573.
Date Filed: April 27, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0495 dated 24 April 2001, Mail Vote 124—Resolution 010a, TC3 Special Passenger Amending Resolution between China and Korea R1–R4, Intended effective date: 11 June 2001.

Docket Number: OST–2001–9575.
Date Filed: April 27, 2001.
Parties: Members of the International Air Transport Association.
Subject: Application of International Air Transport Association pursuant to 49 U.S.C. Section 40109, requesting an exemption from the requirement of condition #2 of CAB Order 68–7–55, that all Traffic Conference Resolutions and Recommended Practices be submitted for approval and antitrust immunity so that those Resolutions and Recommended Practices adopted by the IATA Passenger Services Conference and enumerated in the Appendix to this document may be put into effect without the Department's prior review.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–12113 Filed 5–14–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for the Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending April 27, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–9558.
Date Filed: April 25, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 16, 2001.
Description: Application of DaimlerChrysler Aviation GmbH pursuant to 49 U.S.C. Section 41302, Subpart B and Part 211, requesting issuance of a foreign air carrier permit, authorizing it to provide charter foreign air transportation of persons, property and mail; (1) between points in the Federal Republic of Germany and the United States; and, (2) between points in the United States and points in third countries as authorized by and in accordance with the provisions of Part 212, and the Air Transport Agreement between the Governments of the United States and the Federal Republic of Germany.

Docket Number: OST–2001–9566.
Date Filed: April 26, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 17, 2001.
Description: Application of Cherokee Air, Ltd. pursuant to 49 U.S.C. Section 41301 and Subpart Q, requesting renewal of its foreign air carrier permit authority, authorizing it to engage in more than 10 on-demand charter flights each month from Marsh Harbour, Abaco, Commonwealth of the Bahamas, to the United States.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 01–12112 Filed 5–14–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revisions to Advisory Circular—Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circular revision and request for comments.

SUMMARY: The Federal Aviation Administration requests comments regarding a proposed revision to Advisory Circular (AC) 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes.'' The proposed revision provides revised guidance concerning proposed rulemaking published elsewhere in this issue of the **Federal Register** concerning the airspeed indicating system. This notice provides interested persons an opportunity to comment on the proposed revision to the AC concurrently with the proposed rulemaking.

DATES: Comments must be received on or before July 16, 2001.

ADDRESSES: Send all comments on the proposed AC revision to the Federal Aviation Administration, Attention: Don Stimson, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Program Management Branch, ANM–114, at the above address, telephone (425) 227–2126, or facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed revision to the AC by submitting written data, views, or

arguments. You must identify the title of the AC and submit comments in duplicate to the address specified above. The Transport Airplane Directorate will consider all comments received on or before the closing date for comments before issuing a revision to the AC.

Discussion

By a notice of proposed rulemaking published in this same issue of the **Federal Register**, the Federal Aviation Administration (FAA) proposes to amend the airworthiness standards for transport category airplanes concerning the airspeed indicating system. The proposed amendment would update the current standards by adding airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply, would add a requirement that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff, and would also add a requirement to limit the effects of airspeed lag. The proposed amendment would harmonize these standards with those being proposed for the European Joint Aviation Requirements (JAR–25).

To address the additional rulemaking requirements proposed for part 25, the FAA also proposes to revise Advisory Circular (AC) 25–7A to describe acceptable means of showing compliance with the proposed rule. This revision only addresses guidance material associated with the airspeed indicating system, and should not be confused with other proposed revisions of AC 25–7A for which the FAA is currently seeking comment. Issuance of a revised AC is contingent on adoption of the proposed revisions to part 25.

Proposed Revisions to AC 25–7A

1. Replace existing paragraph 177a(1)(v) with new paragraphs a(1)(v) and (vi) to read as follows:

(v) An acceptable means of compliance when demonstrating a perceptible speed change between 1.3 V_S to stall warning speed is for the rate of change of IAS with CAS to be not less than 0.75.

(vi) An acceptable means of compliance when demonstrating a perceptible speed change between V_{MO} to $V_{MO}+\frac{2}{3}(V_{DF}-V_{MO})$ is for the rate of change of IAS with CAS to be not less than 0.50.

2. Redesignate existing paragraph 177a(1)(v), Airspeed Lag, as paragraph 177a(1)(vii).

Issued in Renton, Washington, on May 2, 2001.

Lirio L. Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12104 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: This notice announces the first meeting of the FAA Aircraft Repair and Maintenance Advisory Committee. The purpose of the meeting is to establish the Committee's specific goals and objective pursuant to its congressional mandates and determine the tasking and final product of the committee.

DATES: The meeting will be held June 12, 2001, 8 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Bessie Coleman Conference Center, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ellen Bowie, Federal Aviation Administration (AFS–340), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–9952; fax (202) 267–5115; e-mail: *Ellen.Bowie@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee to be held on June 12, at the Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Conference Center, Washington, DC 20591. The agenda will include:

- Welcome and Introductions—Angela Elgee, Executive Director.
- Remarks by Secretary Norman Mineta.
- Selection of Committee Chairman and Assistant Committee Chairman.
- Review of Committee's Congressional Mandate.
- Discussion on Committee Goals and Objectives Relative to the Congressional Mandate.
- Identification of Maintenance and Repair Station Issues Relative to Congressional Mandate.
- Identification of Future Committee Tasks.
- Discussion on Working Groups and Assignment of Tasks to Working Groups.
- Scheduled Statements or Presentations by Member of the Public.
- Discussion on Future Meeting Dates.
- Closing Remarks and Adjournment.

Attendance is open to the public but will be limited to the availability of meeting room space. Please contact Ms. Ellen Bowie at the number listed above if you plan to attend the meeting or to present a verbal statement.

Requests to present a verbal statement must include a written summary of remarks. Please focus your remarks on the tasks, specific activities, projects or goals of the Advisory Committee, and benefits to the aviation public. Speakers will be limited to 5 minute presentations. Send written requests to Ellen Bowie, AFS–340, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591.

Individuals making verbal presentations at the meeting should bring 25 copies to give to the Committee's Executive Director. Copies may be provided to the audience at the discretion of the submitter.

Dated: Issued in Washington, DC on May 8, 2001.

Angela B. Elgee,

Executive Director.

[FR Doc. 01–12111 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 01–03–C–00–LWS To Impose and Use, the Revenue from a Passenger Facility Charge (PFC) at Lewiston-Nez Perce County Regional Airport, Submitted by the City of Lewiston and Nez Perce County, Lewiston-Nez Perce County Regional Airport, Lewiston, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Lewiston-Nez Perce County Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 14, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robin Turner, Airport Manager, at the following address: City of Lewiston and Nez Perce County, 406 Burrell Avenue, Lewiston, ID 83501.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Lewiston-Nez Perce County Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 01–03–C–00–LWS to impose and use PFC revenue at Lewiston-Nez Perce County Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 4, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Lewiston and Nez Perce County, Lewiston-Nez Perce County Regional Airport, Lewiston, Idaho was substantially complete within the requirements of § 158.25. The FAA will approve or disapprove the application, in whole or in part, no later than August 7, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 1, 2001.

Proposed charge expiration date: July 1, 2011.

Total requested for use approval: $1,171,746.

Brief description of proposed project: Security Perimeter Fencing; Reconstruct Portion of Taxiways A, B and H; Airport Signing; Acquisition of Aircraft Rescue and Fire Fighting Truck & Equipment; Master Plan Update; Reconstruct Taxiway B (Phase II) and Construct Taxiway M; Acquire Passenger Lift Device; Reconstruct Taxiway B (Phase III) and Rehabilitate Terminal Ramp; Construct Midfield Taxiway and Rehabilitate Runway 11/29; Install Security Gates; Precision Approach Path Indicator Installation on Runways 11/29 and 8/26; Construct Safety Area for Runway 8 Approach and part 77 Obstruction Removal.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Non scheduled air taxi/commercial operators utilizing aircraft having seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lewiston-Nez Perce County Regional Airport.

Issued in Renton, Washington on May 4, 2001.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–12107 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Francisco International Airport, San Francisco, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 14, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John L. Martin, Airport Director, San Francisco International Airport, at the following address: P.O. Box 8097, San Francisco, CA. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Francisco Airport Commission under § 158.23.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On April 27, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Francisco Airport Commission was substantially complete within the requirements of § 158.25. The FAA will approve or disapprove the application, in whole or in part, no later than July 28, 2001.

The following is a brief overview of the use application:

No.: 01–01–C–00–SFO

Level of proposed PFC: $4.50.

Charge effective date: October 1, 2001.

Proposed charge expiration date: June 1, 2003.

Total estimated PFC revenue: $112,738,745.

Brief description of the proposed project: Project Development Costs Associated with the Reconfiguration of Runways.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd.,

Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Francisco Airport Commission.

Issued in Hawthorne, California, on April 26, 2001.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–12109 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 14, 2001.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 1, 2001, the FAA received a request to amend the application to impose and use a PFC submitted by the city of San Jose within the requirements of § 158.37(b). The FAA will approve or disapprove the amendment no later than June 29, 2001.

The following is a brief overview of the request:

Application number 00–09–C–00–SJC

Proposed amendment: Increase in the PFC collection level from $3.00 to $4.50 for all the projects in the application.

Any person may inspect the request in person at the FAA office listed above and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261.

Issued in Hawthorne, California, on April 26, 2001.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–12108 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 14, 2001.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under § 158.23.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 1, 2001, the FAA received a request to amend the application to impose and use a PFC submitted by the city of San Jose within the requirements of § 158.37(b). The FAA will approve or disapprove the amendment no later than June 29, 2001.

The following is a brief overview of the request:

Application number: 99–08–C–00–SJC.

Proposed Amendment: Increase in the total estimated PFC revenue, for the construction of an interim federal inspection services project, from $23,598,000 to $36,880,000.

Estimated charge expiration date: Altered from November 1, 2002, to October 1, 2006.

Any person may inspect the request in person at the FAA office listed above and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division,

15000 Aviation Blvd., Lawndale, CA 90261.

Issued in Hawthorne, California, on April 26, 2001.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–12110 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Sunday, June 3, 2001. The meeting begins at 1:30 p.m. The letter designations that follow each item mean the following: (I) is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Housekeeping items—introductions, antitrust, previous minutes, etc.; (2) Federal Report (I/D); (3) President's Report (I/D); (4) 10-Year Program Plan & Research Agenda Update (I/D); (5) Break; (6) 511 Update (I/D); (7) Driver Focus Update (I/D); (8) Expedited Standards Update (I/D); (9) Closing Housekeeping—next meeting dates/locations, adjourn.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Sunday, June 3, 2001 from 1:30 p.m.–4 p.m.

ADDRESSES: Fontainebleau Hilton Resort, 4441 Collins Avenue, Miami Beach, Florida 33140. Phone: (305) 538–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 10, 2001.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office.

[FR Doc. 01–12171 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Safety Performance Standards Program Meeting

AGENCY: National Highway Traffic Safety Administration (DOT).

ACTION: Notice of NHTSA rulemaking status meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular public meeting relating to its vehicle regulatory program will be held on Thursday, July 26, 2001, beginning at 9:45 a.m. and ending at approximately 12 p.m. at the BWI Airport Marriott Hotel in Baltimore, Maryland. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Microsoft Word) by Monday, July 2, 2001, to the address shown below or by e-mail. If sufficient time is available, questions received after July 2, may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by July 2, 2001, and the issues to be discussed, will be posted on NHTSA's web site www.nhtsa.dot.gov) by Monday, July 23, 2001, and also will be available at the meeting. The agency will hold a second public meeting on July 26, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5 p.m. This meeting is described more fully in a separate announcement. The next NHTSA Public Meeting will take place on Thursday, November 15, 2001, at the Best Western Gateway International Hotel, Romulus, Michigan.

ADDRESSES: Questions for the July 26, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the BWI Airport Marriott Hotel, 1743 West Nursery Road, Baltimore, MD 21240. The telephone number for the BWI Airport Marriott Hotel is 410–859–8300.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds regular public meetings to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov,* at docket NHTSA–99–5087. Questions to be answered at the public meeting should be organized by categories to help us process the questions into an agenda form more efficiently.

Sample Format

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB Monday, July 23, 2001.

Issued: May 8, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–12170 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of a Petition for a Defect Investigation and for Rulemaking, DP00–005

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation and for rulemaking.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency investigate an alleged safety-related defect in certain Ford pickup trucks and to begin a rulemaking proceeding. The petition is hereinafter identified as DP00–005.

FOR FURTHER INFORMATION CONTACT: For defects issues, Peter C. Ong, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0583. For rulemaking issues, Michael Huntley, Office of Safety Performance Standards, Telephone: (202) 366–0029.

SUPPLEMENTARY INFORMATION: Dr. Carl E. Nash (petitioner) submitted a petition to NHTSA by letter dated September 1, 2000, requesting, among other things, that a safety-related defect investigation be initiated with respect to the interaction of a vehicle seat belt in the model year (MY) 1997 Ford Ranger pickup truck and certain child safety seats (CSS). Specifically, the petitioner alleges that the 2-point, manually-adjusting lap belt design located in the center seating position of the MY 1997 Ford Ranger is defective because it does not securely hold certain forward-facing CSSs, such as the 1997 Cosco Touriva. Since both the MY 1996 and 1997 Ford Rangers have the same lap belt design in the center seating position, they will be the subject vehicles in this phase of the analysis. Additionally, the petitioner requests that a rulemaking be considered to prohibit this type of lap belt assembly from being used in any passenger vehicles in the future.

A review of the agency's data files, including information reported to the DOT Auto Safety Hotline, does not indicate any complaints about the lap belt for the center seat on the subject vehicles, including when that belt is used with a CSS. Also, a review of the data for complaints about the Cosco Touriva CSSs showed no complaints referring to CSS attachment or installation problems when used in the subject vehicles, or in any other vehicles.

The subject vehicles have a 3-point combination lap and shoulder belt assembly and an air bags at the driver and outboard passenger seating positions, and a manually-adjusting lap belt assembly at the center seating position. The outboard passenger seat belt assembly has a dual locking mode belt retractor to help maintain belt tension for both the occupants and a CSS. The lap belt assembly for the center seating position has a built-in friction locking bar inside the latch plate assembly to keep the belt tight, but no retractor.

Instructions are given in the subject vehicles' owner's guides,[1] describing how to install a CSS in a seating position with a combination lap and shoulder belt, which is the outboard seating position. According to those instructions, the seat belt assembly is to be engaged in the automatic locking mode to ensure that the seat belt remains tight when used to restrain a CSS. The instructions also recommend the use of a top tether strap with forward-facing CSSs. The guide also states that when using a rear-facing infant CSS, the passenger air bag must be turned off. No instructions are given for the installation of a CSS in the center seating position, although there is no specific direction not to do so.

ODI personnel easily installed and secured a Cosco Touriva CSS in the outboard passenger seating position of a subject vehicle following the instructions provided in the vehicle's owner's guide. It was difficult to install the Touriva CSS in the center seating position because the base of the CSS was wider than the distance between the seat belt latch plate assembly exit point and the buckle assembly exit point in the bench seat. ODI also observed that when the latch plate end was inserted into the buckle, the buckle portion of the lap belt assembly protruded 5–6 inches out from the seat and was about the same height as the height of the slot in the CSS for the seat belt to pass through.

ODI personnel then checked the CSS for tightness as prescribed in the Touriva instruction manual:[2] ''Tilt and push the child restraint forward and to both sides.'' The CSS moved and loosened from the lap belt when it was tilted in the side to side direction. It appeared that the belt webbing could form a 90° angle to the latch plate assembly and prevent the engagement of the friction locking bar in the belt assembly of the vehicle. This inability of the Touriva CSS to remain tightly secured on the center seat was evident.

ODI personnel also installed another forward-facing CSS, the Gerry One-Click Model 691, in a subject vehicle. Again, ODI personnel easily installed and secured the One-Click CSS in the outboard passenger seating position. Due to its narrower base, it was also easier to install and secure in the center seating position than the Cosco Touriva CSS. In the final check for proper fit/tightness, the One-Click was ''rocked from side to side'' as instructed in the One-Click instruction manual,[3] and it remained tight and secured to the center seat.

It was noted that even if the Cosco Touriva CSS could have been securely attached at the center seating position, its left side intruded into the driver's seating area, and therefore could interfere with the driver's ability to operate the vehicle. In addition, the driver would not be able to readily operate the floor-mounted shift lever because it would be blocked by the left-front corner of the CSS (approximately 60% of the subject vehicles were sold with a floor-mounted shift lever).

Proper interaction and fit between a vehicle and a CSS are very important. NHTSA's child passenger safety brochures advise parents and caregivers that ''Not all child seats can be installed in all vehicles and all seating positions. With numerous models of child seats, almost 300 models of passenger vehicles, and the wide range of belt systems available today, correctly installing a child seat can be challenging.'' These brochures also caution owners that ''Vehicle seats and seat belts are built for the comfort of adults, not to secure a child car seat correctly. Some child car seats cannot be used safely in certain seating positions.''[4] It is, therefore, imperative that consumers check their vehicle owner's manual and child restraint

[1] E.g., MY 1997 Ford Ranger Owner's Guide, First Printing, Pages 101–145 and MY 1996 Ford Ranger Owner's Guide, First Printing, Pages 9–40.

[2] Cosco Touriva One-Guard models 02–014/02–015, Instruction Manual for a MY 1997 CSS, Page 7, Sections ''Do You Have a Manual Belt?''

[3] Evenflo/Gerry One-Click Model 691 CSS Owner's Manual, Page 11, Section ''Manually Adjusted Belt and Locking Latch Plates.''

[4] NHTSA Publications DOT HS 809 011, ''Buying a Safer Car for Child Passengers 2000,'' and DOT HS 808 302, ''Are You Using It Right?''

instruction manual to determine where to properly place and how to properly secure child safety seats.

NHTSA has published numerous other brochures on how to safely transport children. They describe other important vehicle-to-CSS interface issues and factors that need to be considered by parents and caregivers. The brochures are available on our NHTSA website [5] or can be obtained by contacting the NHTSA Hotline.[6]

NHTSA agrees that the design of the lap belt assembly for the center seating position in the subject vehicles may make it difficult for CSSs similar to the Cosco Touriva to be installed securely and that children riding in an inadequately-secured CSS might not be properly protected in the event of a crash. However, these CSSs can be installed securely in the outboard passenger seating position as described in the vehicle owner's manual. (We note that the subject vehicles, when equipped with the optional passenger air bag, are equipped with switches that allow the driver to temporarily disable the passenger air bag when a child is present to assure that a deploying air bag will not injure the child.) In addition, there have been no consumer complaints regarding this alleged problem in the subject vehicles. For these reasons, NHTSA has no basis on which to conclude that this condition constitutes a safety-related defect. It is unlikely that NHTSA would issue an order concerning the notification and remedy of a safety-related defect at the conclusion of an investigation into this matter.

With respect to the petitioner's request that a rulemaking be commenced to consider prohibiting this type of lap belt assembly from being used in any passenger motor vehicles in the future due to its inability to securely hold certain models/sizes of CSSs, NHTSA has recently amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213 and adopted a new FMVSS No. 225 to establish new anchorage and mounting requirements for vehicles and CSSs. FMVSS No. 225 was adopted in March 1999 and, when fully effective, will require passenger cars, SUVs, light-duty trucks, buses, and vans to be equipped with easy-to-use anchorage systems consisting of an upper tether anchorage and two lower anchorages designed to be used exclusively for securing CSSs. By requiring an independent child restraint anchorage system, this standard will significantly improve the compatibility of vehicle seats and CSSs. As of September 1, 2000, 80% of new vehicles were required to be equipped with the user-friendly upper tether anchorages and by September 1, 2001, 80% of new vehicles will also be equipped with the lower restraint anchorages. All passenger cars manufactured after September 1, 2002, will be equipped with both the upper tether and lower restraint anchorages. All CSSs manufactured after September 1, 2002 will be required to have hardware to attach to these standardized anchorages, and will also be required to be attachable to the vehicle via the vehicle's seat belt system, as is currently done, since the pre-existing fleet will not have the new anchorages. We note, however, that FMVSS No. 225 only requires the new, standardized anchorages at certain seating positions, which vary depending on the type of vehicle, so it is crucial that consumers consult their vehicle owner's manual and their child restraint instruction manual to determine where and how to properly install their CSS. In view of these recent amendments, the compatibility problems noted by the petitioner will not occur in future vehicles, so there is no need for further regulatory action.

For the foregoing reasons, and in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition for a defect investigation and for rulemaking is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: May 8, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–12193 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–59–P

[5] NHTSA Website at http://www.nhtsa.dot.gov/people/injury/childps/.

[6] NHTSA Hotline at 1–888-DASH–2-DOT (1–888–327–4236).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, Transportation.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public law 72–363; 5 U.S.C. App.2) notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, June 1, 2001, 10 a.m. to 4 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in conference room 3200–3202 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include, Director's programs update, indicators, outreach, performance measures, confidentiality, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lillian ''Pidge'' Chapman, Council Liaison, on (202) 366–1270 prior to May 25, 2001. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Chapman.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Chapman (202) 366–1270 at least seven days prior to the meeting.

Issued in Washington, DC, on May 8, 2001.

Ashish Sen,

Director.

[FR Doc. 01–12194 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Electronic Filing User Access Enrollment Form.

DATES: Written comments should be received on or before July 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Thomas Stewart, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Electronic Filing User Access Enrollment Form.

OMB Number: 1512–0561.

Form Number: ATF F 5013.1.

Abstract: The purpose of ATF F 5013.1 is to authenticate end users in a pilot program to electronically file excise taxes. The information is used by the Government to verify the identity of the end users prior to issuing them passwords.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 7 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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 purchases of services to provide information.

Dated: May 8, 2001.

William T. Earle,

Assistant Director (Management), CFO.

[FR Doc. 01–12160 Filed 5–14–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–39]

Customs Broker License Cancellations

AGENCY: U.S. Customs Service, Department of the Treasury.

I, as Assistant Commissioner, Office of Field Operations, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111), hereby cancel the following customs brokers' licenses based on the authority as annotated:

Name	Port	License No.	Authority
S. Stern Custom Brokers, Inc.	New York	04203	19 CFR 111.51(a)
Lawrence J. Cullen & Assoc., Inc.	New York	12700	19 CFR 111.51(a)

Dated: May 8, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–12204 Filed 5–14–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–40]

Customs Broker License Revocation

AGENCY: U.S. Customs Service, Department of the Treasury.

I, as Assistant Commissioner, Office of Field Operations, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111), hereby revoke the following customs broker's license based on the authority as annotated:

Name	Port	License No.	Authority
Escort Forwarding Inc	New York	14739	19 CFR 111.45(a)

Dated: May 8, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–12205 Filed 5–14–01; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Tuesday,
May 15, 2001

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Texas; Ozone; Beaumont/Port Arthur Ozone Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6976–1]

Approval and Promulgation of Implementation Plans; Texas; Ozone; Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the Texas 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Beaumont/Port Arthur (BPA) moderate ozone nonattainment area. The attainment demonstration SIP is addressed in the State of Texas submittals dated November 12, 1999 and April 25, 2000. In approving the attainment demonstration, EPA is: Extending the ozone attainment date for the BPA ozone nonattainment area to November 15, 2007 while retaining the area's current classification as a moderate ozone nonattainment area; approving the State's enforceable commitment to perform a mid-course review and submit a SIP revision to the EPA by May 1, 2004; finding that the BPA area meets the Reasonably Available Control Technology (RACT) requirements for major sources of volatile organic compounds (VOC) emissions; and approving the motor vehicle emissions budgets (MVEB). A notice of proposed rule making was published on this action on December 27, 2000 (65 FR 81786). EPA received comments on that proposal. EPA has also received comments on two related proposed actions: the ''Extension of Attainment Dates for Downwind Transport Areas,'' 64 FR 12221 (March 25, 1999); and, the proposed rulemaking published on April 16, 1999 (64 FR 18864), which addressed the Clean Air Act reclassification or eligibility for extension of attainment date for the BPA area. In this action, EPA responds to the comments to all three of these documents. For details on the SIP submittals and the EPA analysis of the submittals, refer to the December 27, 2000 proposed rule.

DATES: This final rule is effective on June 14, 2001.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and, the Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–2140, e-Mail Address: pratt.steven@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This supplementary information section is organized as follows:

I What Texas SIP revisions are the topic of this action?
II What previous actions have been taken regarding BPA attainment demonstrations and attainment dates?
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I. What Texas SIP Revisions Are the Topic of This Action?

The Texas Natural Resource Conservation Commission (TNRCC) made two submittals to us, which concern the ozone attainment demonstration, and an extension of the attainment date for the BPA ozone nonattainment area:

(a) A November 12, 1999, submission from the Governor of Texas, which included the following:

A. Regulations and associated documentation for the control of VOC emissions from batch process operations and industrial wastewater treatment processes, intended to fulfill the remaining VOC RACT requirements of section 182(b)(2) of the Act for the BPA moderate nonattainment area;

B. A regulation and associated documentation for the control of NO_X emissions from lean burn engines, intended to meet the remaining NO_X RACT requirements of section 182(b)(2) of the Act for the BPA moderate nonattainment area;

C. Photochemical Modeling demonstration and its accompanying control strategy to bring the BPA area into attainment of the one-hour ozone standard as expeditiously as practicable, but no later than 2007;

D. 2007 motor vehicle emissions budgets for transportation conformity;

E. Emissions growth estimates and an emissions inventory; and,

F. An enforceable commitment to submit additional rules to us in accordance with its modeled control strategy. (This was accomplished with the April 25, 2000, submittal—see below)

(b) An April 25, 2000, submission from the Governor of Texas, which included the following:

A. Beyond RACT NO_X emissions specifications in the BPA area for electric utility boilers, industrial, commercial or institutional boilers, and certain process heaters, relied upon for attainment in the BPA area;

B. Additional regional rules and orders relied upon for demonstrating attainment in the BPA area;

C. A Revised Photochemical Modeling demonstration and emissions growth estimates; and,

D. An enforceable commitment to perform a mid-course review with submittal to the EPA by May 1, 2004.

The TNRCC held a public hearing on the November submittal on August 9, 1999. This submittal was formally adopted by the TNRCC on October 27, 1999. The TNRCC held ten public hearings on the April submittal; a public hearing was held in the BPA area on January 31, 2000. The TNRCC formally adopted the April 25, 2000, submittal on April 19, 2000.

II. What Previous Actions Have Been Taken Regarding BPA Attainment Demonstrations and Attainment Dates?

On April 16, 1999, EPA proposed in the **Federal Register** to reclassify the BPA area to a serious ozone nonattainment area, and alternatively, proposed to extend the BPA area's attainment date if the State submitted a timely SIP meeting the criteria of the 1998 Transport Policy (64 **Federal Register** 18864).

The BPA Attainment Demonstration SIP revision was adopted by the State on October 27, 1999 and submitted to EPA under a cover letter from the Governor dated November 12, 1999. This submittal was termed by the State as ''Phase I'' of their NO_X rulemaking activities. The State submitted a revision to their SIP dated April 25, 2000, as ''Phase II'' NO_X rules and controls needed for attainment. We proposed approval of these SIP revisions in a notice of proposed rulemaking (NPR) published on December 27, 2000 (65 FR 81786). EPA

received comments on that proposal. EPA has also received comments on two related proposed actions: The ''Extension of Attainment Dates for Downwind Transport Areas'' 64 FR 12221 (March 25, 1999); and, the proposed rulemaking published on April 16, 1999 (64 FR 18864) which addressed the Clean Air Act potential reclassification or eligibility for extension of attainment date for the BPA area. In this action, EPA responds to the comments to all three of these documents.

III. What Motor Vehicle Emissions Budgets Are We Approving?

Texas has submitted motor vehicle emissions budgets for the 2007 attainment year for the BPA ozone nonattainment area. The emission budgets are shown in Table 1.

TABLE 1.—BPA 2007 ATTAINMENT MOTOR VEHICLE EMISSIONS BUDGETS

Pollutant	2007 tons/day
VOC	17.22
NO_X	29.94

We are approving these MVEBs in this action. These MVEBs are approvable as they are consistent with the control measures in the SIP, and the SIP as a whole demonstrates attainment.

IV. What Are the Requirements for Full Approval of the Attainment Demonstration?

In the April 16, 1999, notice we proposed to find pursuant to section 181(b)(2) of the Clean Air Act that the BPA area had failed to attain the ozone one-hour NAAQS by the date prescribed under the Act for moderate ozone nonattainment areas (i.e., November 15, 1996). Finalizing that finding, would result in the BPA area being reclassified from moderate nonattainment to serious nonattainment.

Alternatively, we proposed to extend the attainment date, providing that Texas met the criteria of our July 16, 1998 transport policy, ''Guidance on Extension of Attainment Dates for Downwind Transport Areas.'' If Texas submitted a SIP by November 15, 1999, that met the July 1998 transport policy, we stated we would issue a supplemental proposal in a **Federal Register** notice to extend the BPA area's attainment date as appropriate.

The demonstration SIP must meet applicable criteria as detailed in the Act. The specific requirements of the Act for moderate ozone nonattainment areas are found in part D, section 182(b). Section 172 in part D provides the general requirements for nonattainment plans. Refer to the December 27, 2000, supplemental proposed rule for further details of the SIP requirements.

V. How Did Texas Fulfill These Requirements for Full Approval?

Texas fulfilled the requirements for full approval as follows.

Texas adopted the BPA Attainment Demonstration SIP revision on October 27, 1999 and submitted it to the EPA under a cover letter from the Governor dated November 12, 1999. This submittal was termed by the State as ''Phase I'' of their NO_X rulemaking activities needed for attainment. The State submitted a revision to their SIP dated April 25, 2000, as ''Phase II'' NO_X rules and controls needed for attainment.

The State addressed the aspect of transport in accordance with our July 16, 1998 transport policy, ''Guidance on Extension of Attainment Dates for Downwind Transport Areas.'' Texas has demonstrated that during some BPA exceedances, ozone levels are affected by emissions from the Houston/Galveston (HG) area, and that the HG area emissions affect BPA's ability to meet attainment of the 1-hour ozone standard.

Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on weight of evidence (as Texas does) should contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The Texas Natural Resource Conservation Commission (TNRCC) submitted an enforceable commitment in the April 2000 SIP submittal to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration). The TNRCC committed that it will submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004.

On March 7, 1995, as part of our action approving VOC requirements, we found that TNRCC had implemented RACT on all major sources in the BPA area except those that were to be covered by post-enactment Control Technique Guidelines (CTG's). 44 FR 12438 (March 7, 1995). Since that time, many expected CTGs were issued as Alternative Control Technique documents (ACTs). Of the expected CTGs and ACT's, BPA has major sources in the following categories: Batch processing; reactors and distillation; industrial wastewater; and Volatile Organic Liquid Storage. EPA has approved measures as meeting RACT for the reactors and distillation and the Volatile Organic Liquid Storage categories for the BPA area. 64 FR 3841 (January 26, 1999), and 61 FR 55894 (October 30, 1996), respectively. EPA has found that the State is imposing RACT on the batch processing and industrial wastewater categories in the BPA area (65 FR 79745, December 20, 2000). While CTGs and ACTs were issued for other categories such as wood furniture coating or aerospace coating, there are no major sources in those categories in the BPA area. TNRCC submitted, and EPA approved, negative declarations on these categories (61 FR 55894, October 30, 1996). There are also no other non-CTG/ACT major VOC sources in the BPA area that are not already covered by a state rule approved by the EPA as meeting RACT. Therefore, it is EPA's position that RACT is being implemented on all major VOC sources in BPA.

Finally, Texas has submitted motor vehicle emissions budgets for the 2007 attainment year for the BPA ozone nonattainment area.

VI. What SIP Elements Did EPA Need To Take Final Action on Before Approval of the Attainment Demonstration Could Be Granted?

In the NPR for the Texas attainment demonstration SIP published on December 27, 2000, we stated that we could not finalize the proposed actions unless and until we approved eight Texas rules covering NO_X and VOC emissions control measures relied upon by the modeled attainment demonstration for the BPA nonattainment area. These actions have been approved as detailed below.

1. The NO_X rules for Electric Generating Facilities in East and Central Texas (30 TAC sections 117.131, 117.133, 117.134, 117.135, 117.138, 117.141, 117.143, 117.145, 117.147, 117.149, 117.512), were approved by the EPA on March 16, 2001 (66 FR 15195);

2. The State-wide NO_X rules for Water Heaters, Small Boilers, and Process Heaters (30 TAC sections 117.460, 117.461, 117.463, 117.465, 117.467, 117.469), were approved by the EPA on October 26, 2000 (65 FR 64148);

3. The revised emission specifications in the BPA area for Electric Utility Boilers, Industrial, Commercial or Institutional Boilers and certain Process Heaters (30 TAC sections 117.104, 117.106, 117.108, 117.116, 117.206 as they relate to the BPA area, and the repeal of sections 117.109 and 117.601 as they relate to the BPA area), were

approved by the EPA on October 26, 2000 (65 FR 64148);

4. The administrative revisions to the existing Texas NO_X SIP (30 TAC sections 117.101–117.121, 117.201–117.223, 117.510, 117.520, and 117.570), were approved by the EPA on October 26, 2000 (65 FR 64148);

5. The two Agreed Orders entered into by TNRCC and Alcoa, Inc. and TNRCC and Texas Eastman, were approved by the EPA on October 26, 2000 (65 FR 64148);

6. Lower RVP Program in East and Central Texas (30 TAC sections 114.1, 114.301, 114.302, and 114.304–114.309), was approved by the EPA on April 26, 2001 (66 FR 20927);

7. Stage I vapor recovery Program in East and Central Texas (30 TAC sections 115.222–114.229), was approved by the EPA on December 20, 2000 (65 FR 79745); and,

8. VOC rules as RACT for batch processing (30 TAC sections 115.160–115.169) and wastewater (30 TAC sections 115.140–115.149), were approved by the EPA on December 20, 2000 (65 FR 79745).

VII. Implementation of Reasonably Available Control Measures

Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and for attainment of the standard. Details of these requirements and applicable guidelines are provided in the December 2000, NPR. As discussed in the NPR, EPA reviewed the SIP submittal for the BPA area and found that it did not include sufficient discussion concerning the rejection of certain available measures as RACM for the specific BPA area. EPA reviewed potential available measures, as documented in the RACM analysis section of the technical support document (TSD) for the December 2000, NPR. EPA concludes that this additional set of evaluated measures is not reasonably available for the specific BPA area, because (a) some would require an intensive and costly effort for numerous small area sources, (b) due to the small percentage of mobile source emissions in the over-all inventory, some are not cost-beneficial, and (c) since the BPA area relies in part on reductions from the upwind HG area which are substantial, and the reductions projected to be achieved by the evaluated additional set of measures are relatively small, they would not produce emission reductions sufficient to advance the attainment date in the BPA area and, therefore, should not be considered RACM.

Although EPA encourages areas to implement available measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the BPA area to achieve attainment in advance of full implementation of all other required measures.

VIII. What Comments Were Received on This Proposed Approval, and the Two Related Actions, and How Has the EPA Responded to Those?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 27, 2000 (65 FR 81786) for the proposed approval of BPA area's ozone attainment demonstration and attainment date extension. Comments were received from: Jefferson-Orange-Hardin Regional Transportation Study Transportation Planning Committee; City of Nederland; PDGlycol; Chevron Phillips Chemical Company; City of Orange; Jefferson County Drainage District No. 6; TNRCC; Beaumont Chamber of Commerce; City of Vidor; City of Port Neches; City of Port Arthur; Hardin County Commissioners Court; Port Arthur International Public Port; City of Beaumont; South East Texas Regional Planning Commission; City of Lumberton; Commissioners Court of Jefferson County; Orange County Commissioners Court; Southeast Texas Environmental Managers; Entergy; South Hampton Refining Co.; City of West Orange; Firestone Polymers; City of Pinehurst; Port of Beaumont Navigation District; Lone Star Chapter Sierra Club; and, three individuals.

EPA also received comments from the public on the proposed rulemaking published on April 16, 1999 (64 FR 18864) which addressed the Clean Air Act potential reclassification or eligibility for extension of attainment date for the BPA area. In that notice, we proposed two alternative options. One option was to find that the BPA area had failed to attain the ozone one-hour NAAQS by the date prescribed under the Act for moderate ozone nonattainment areas, or November 15, 1996. Finalizing that finding would have resulted in the BPA area being reclassified from moderate nonattainment to serious nonattainment. Alternatively, we proposed to extend the attainment date, providing that Texas met the criteria of our July 16, 1998 transport policy, ''Guidance on Extension of Attainment Dates for Downwind Transport Areas.''

Finally, a number of the comments received in Docket A–98–47 on EPA's notice regarding ''Extension of Attainment Dates for Downwind Transport Areas'' 64 FR 12221 (March 25, 1999), are relevant to this rulemaking. EPA incorporates its responses to those comments, set forth in 66 FR 586 (January 3, 2001), insofar as herein relevant. EPA sets forth responses to some of the general comments in Section A. Adverse comments as they apply specifically to the BPA area are addressed in Section C.

The following discussion summarizes and responds to all three sets of comments.

A. Comments Received in Response to March 1999 Notice

Comment 1: EPA does not have the legal authority to extend the attainment deadline for serious areas until hoped-for NO_X reductions occur from upwind states in response to the NO_X SIP call and/or section 126 actions. Such an extension is not authorized by any provision of the statute. It is not within EPA's discretion to extend the attainment dates for downwind areas classified as moderate or serious. The Act does not authorize EPA to extend attainment deadlines except in certain instances. Congress provided express attainment deadlines in the Clean Air Act, and EPA is without authority to create exemptions from them. Section 181 provides the only exception to the general rule that areas must meet their attainment dates, and is the exclusive remedy. Section 181(a)(5) allows a one-year extension if the state has complied with all requirements and commitments in the applicable SIP and had no more than one exceedance in the attainment year. In section 181(a)(5), Congress provided other authority for extending attainment dates, but not to address effects of transport. See section 181(a)(5). Section 181(b)(2)(A) requires reclassification for failure to attain by the attainment date. Section 182 requires submissions of attainment plans by the applicable attainment date. EPA's policy violates these express provisions. The statutory deadlines for attainment, the requirement that SIPs adopt measures adequate to provide for attainment by the statutory deadlines, the statutory limitation on EPA's authority to extend attainment dates under section 181(b), and the procedures to be followed in the event an area fails to attain by the deadline are unequivocal and unambiguous, and compliance is required under step one

of Chevron. (The Supreme Court in Chevron detailed the process that a reviewing court must go through in determining whether an agency's construction of a statute is proper. The first step is the question whether Congress' intent is clear. If Congress has directly spoken to the precise question at issue, the agency must give effect to the unambiguously expressed intent of Congress. *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984).) The extension policy is inconsistent with sections 182(b)(1)(A), 182(c)(2)(A) and 172(c)(1), which require each nonattainment area to provide for attainment and submit SIPs providing for attainment by the applicable deadline. There is no exemption from these mandates for downwind areas that can attain through local reductions, but find it difficult to do so. The EPA policy is also inconsistent with the Phoenix reclassification action, which stated that EPA had no flexibility to provide for attainment date extensions in that circumstance. In section 181(i) Congress refused to give EPA authority to extend attainment dates in light of reclassification. Although this comment specifically refers to attainment date extensions for serious areas, the EPA addresses it here in the context of granting extensions to moderate areas, such as the BPA area.

Response 1: The absence of an express provision in the Clean Air Act for an attainment date extension based on transport does not deprive EPA of the authority to interpret the Act to permit such an extension. Nor do the specific attainment date extension provisions in the statute preclude EPA's interpreting the statute to allow for an extension to account for upwind transport that has interfered with downwind attainment. This interpretation is necessary to prevent the thwarting of Congressional intent not to unfairly burden downwind areas. In various parts of the statute, Congress expressed an intent to accomplish this through provisions prohibiting transport, but these provisions failed to achieve the Congressional goal in time to allow the downwind areas to meet their originally prescribed attainment dates.

The provisions of section 182 governing reclassification also do not prohibit EPA from interpreting the Act to provide for an attainment date extension based on transport. EPA's policy of extending attainment dates for ozone nonattainment areas affected by transport of ozone and ozone precursors represents a reasonable effort to avoid the frustration of Congressional intent to which a literal application of the reclassification provisions would lead. Where a ''literal reading of the statute would actually frustrate the congressional intent supporting it, [a court may uphold] an interpretation of the statute more true to Congress's purpose.'' *EDF* v. *EPA*, 82 F.3d 451, 468 (D.C. Cir. 1996).

In 1990, Congress established a classification scheme for ozone nonattainment areas that provided for those areas to be classified on the basis of the severity of their ozone problems and for areas with more serious problems to be given more time to attain, but also required to implement more control measures. As part of these provisions, Congress enacted the reclassification provisions under which ozone nonattainment areas that failed to attain the ozone standard as of their attainment dates were to be reclassified to a higher classification, thereby receiving an extension of their attainment date, but also being subjected to additional control requirements. See section 181(b)(2). (Phoenix was reclassified with no demonstration of transport.)

On their face, the reclassification provisions do not provide for any exemption from the reclassification process for areas affected by ozone transport from other upwind areas. However, EPA believes that, in light of developments since the enactment of the 1990 Clean Air Act Amendments, a literal application of those provisions to such areas would frustrate broader congressional intent. In this context it is important to recognize that, apart from the ozone reclassification provisions, the Act contains provisions—section 110(a)(2)(D) and 110(a)(2)(A)—that obligates states to prohibit pollution—including ozone and its precursors—from sources within the state that contribute significantly to nonattainment and maintenance problems in downwind areas (whether within that state or outside it). (Section 110(a)(2)(A) does not expressly deal with transport but imposes a general obligation on a state to do what is needed to meet its CAA obligations, which include bringing nonattainment areas within the state into attainment and, if upwind areas within the state contribute significantly to nonattainment, dealing with emissions from those areas.) Congress was cognizant of the need to control such emissions, and of the inequities between upwind and downwind sources that could result if upwind areas did not impose emission controls on their sources that contribute to downwind air quality problems. Congress thus sought to establish a regime that would eliminate such inequities.

Such controls were not imposed in the timeframes anticipated by Congress. As explained in EPA's transport policy, it in fact took many years for EPA and the States to gain a sufficient understanding of the interstate and intrastate ozone transport problem to determine the appropriate division of control responsibilities between the upwind and downwind areas under the Clean Air Act. It was only through the work of the Ozone Transport Assessment Group (OTAG), which consisted of members from states (including the State of Texas), industry and environmental groups, and EPA's subsequent NO_X SIP call, promulgated in October, 1998, that a better scientific understanding of ozone transport resulted and how to divide the responsibilities among and within the states was established. These developments occurred after the attainment date of November 1996 for the BPA area. Nor did Congress intend that an upwind area within a state, but with a later attainment date, such as HG, should accelerate the timetable provided for its own attainment as an indirect means of controlling transported pollution in a downwind area like BPA.

As EPA stated in its explanation of the legal basis for its attainment date extension policy, the graduated control scheme in sections 181 and 182 of the Act expressed Congressional intent that areas have varying attainment dates, based on the severity of their air quality problem. While all areas must attain ''as expeditiously as practicable'', the more polluted areas are given later deadlines because they must accomplish greater reductions. Thus many upwind areas have later attainment dates than the downwind areas that they are affecting. With respect to the BPA area, the upwind area affecting it, the HG area, has an attainment date eleven years later than the BPA area's original attainment date. EPA has interpreted section 110(a)(2)(A) of the Act as incorporating for areas within the same state the requirement, analogous to section 110(a)(2)(D)(i)(I) for areas in different states, that an upwind area, consistent with the provisions of the Act, be prohibited from contributing significantly to nonattainment in a downwind area.

EPA explained in its policy that these provisions ''demonstrate Congressional intent that upwind areas be responsible for preventing interference with timely downwind attainment.'' They must be reconciled, however, with express Congressional intent that more polluted

areas be allotted additional time to attain. Since Congress failed to specify how to fill this gap, EPA's policy interprets the Act to harmonize the attainment demonstration and attainment date requirements for downwind areas affected by transport both with the graduated attainment date scheme and the schedule for achieving reductions in emissions from upwind areas. Not to do so would result either in penalizing downwind areas for upwind areas' pollution or shortening the time for emissions reductions and attainment in the upwind areas—timeframes that Congress had expressly determined should be lengthier.

To apply the reclassification provisions of section 181(b) without taking into account the timing of the identification and implementation of the emission reductions needed to eliminate the significant contribution of upwind areas to the downwind areas would result in the downwind areas' sources being required to implement potentially costly control measures to offset the effects of upwind area pollution—pollution that will be eliminated by emissions reductions in the upwind areas with later attainment dates. Imposing on downwind areas the burden of controlling for pollution attributable to upwind sources would compound the inequities that Congress was seeking to avoid, thereby frustrating Congressional intent.

Section 181(b)(2) provides that EPA should determine whether an area attained the standard ''within six months following the applicable attainment date (including any extension thereof).'' This reference to extensions in section 181(b)(2) is not limited to extensions granted under section 181(a)(5). Nor does section 181(a)(5) state that Congress intended it to be the only source for an extension.

Moreover, section 181(a)(5) addresses only one specific type of an extension. The fact that Congress provided an extension based on air quality that is near attainment at the time of its deadline does not imply that Congress precluded the Administrator from conferring extensions based on other considerations—such as the case when air quality is affected by downwind transport. The principle underlying section 181(a)(5)—that areas should not be reclassified if they have done enough to control local air pollution but are still not able to attain—also applies in the case of downwind transport. Section 181(a)(5) shows that Congress was not unalterably opposed to extensions of attainment dates without requiring an area to be subjected to reclassification and the increased control burdens that go with reclassifications. Indeed, section 181(a)(5) indicates that Congress wanted to extend attainment dates without adding control obligations when an area had done what was apparently sufficient to bring it into attainment.

The United States Court of Appeals for the District of Columbia Circuit has previously held that EPA may extend SIP submission deadlines even without explicit statutory authorization. In *Natural Resources Defense Council, Inc.* v. *EPA,* 22 F.3d 1125, 1135–36 (D.C. Cir. 1994), the Court upheld EPA's extension of a statutory deadline for submission of NO_X rules and a NO_X exemption request under section 182(f). Although the Court did not use the theory advanced by EPA, the court did find that the Agency had authority under the CAA to extend the deadline. EPA had found that additional time would be needed for States to conduct photochemical grid modeling in order to document the effects of NO_X reductions on an area. EPA had found that ''the time needed to establish and implement a modeling protocol and to interpret the model results will, in a variety of cases, extend beyond the November 15, 1992 deadline for submission of NO_X rules.'' EPA thus extended the submission deadline, provided the states could show that modeling was not available or did not consider effects of NO_X reductions and that the states submit progress reports on the modeling. The D.C. Circuit upheld EPA's extension of the deadline and of EPA's time to review the submissions and make an exemption determination. The Court found that ''because only a single NO_X RACT submission is required under the statute, it is logical to infer that Congress intended data supporting exemptions to be included in that submittal and that the EPA have the full 14–18 months to review them and to make an exemption determination.'' Even in the absence of explicit statutory authority, the Court held that ''had Congress foreseen the exemption timing problem, a matter outside the EPA's control, it would have elected to accord the EPA the full statutory review time.'' 22 F.3d at 1136. The court ruled that ''under the circumstances here the NO_X RACT deadlines were properly extended to further the Clean Air Act's purposes.'' Id. at 1137.

Here, similarly, EPA's and the states' inability, until recently, to adequately document the impacts of upwind areas on the attainment status of downwind areas, and to assess and allocate responsibilities among the areas, caused a delay in meeting the attainment deadlines. EPA believes that, had Congress foreseen this timing problem, it would have elected to accord the states and EPA more time to meet the attainment deadlines without imposing reclassification requirements on downwind areas. As in the case of the delayed photochemical grid modeling needed for the NO_X submissions at issue in *NRDC* v. *EPA,* EPA has shown that the ability to document and analyze ozone transport was delayed. And as with the criteria imposed on areas seeking NO_X submission extensions in NRDC, EPA has required analogous showings by the states, limiting the extensions to those areas that document a transport problem and that submit attainment demonstrations and adopt local measures to address the pollution that is within local control.

And lastly, Texas has benefitted from the OTAG/NO_X SIP call experience. From this modeling we (EPA and Texas) gained a better understanding of the role NO_X emissions play in the formation and transport of ozone. Earlier we had thought local VOC was the major contributing factor, but through the OTAG regional modeling and other analyses being conducted during that time period we learned that NO_X emissions play a major role in ozone formation and that ozone transport distances are much longer than envisioned. As a result TNRCC improved, through its regional modeling to develop boundary conditions, the manner in which transported NO_X is treated. Also, during this time period they benefitted from improvements in our emissions inventories and updates to the carbon bond IV chemistry in the model (e.g., improvement in the isoprene chemistry). These improvements were necessary for us to understand the ozone problem in BPA.

Though not a product of the OTAG or NO_X SIP call modeling, TNRCC did use this time to better understand the land/sea breeze phenomenon which has added a level of complexity to the HG and BPA analysis not seen any where else in the country (with the exception of some lake breeze effects in the Lake Michigan area). Emissions in the HG and BPA areas are emitted into the local atmosphere where ozone formation begins, later emissions and ozone formed are transported out over the warm air over the Gulf of Mexico where the warmer temperatures further activate the chemistry to form more ozone which is then transported back inland over both areas. So far, current meteorological models have not been able to accurately simulate this process. However, our understanding of what is happening has improved to the degree that we at least know better how to

interpret the photochemical model results.

As for Section 182(i), it has no bearing on the authority of the Administrator with respect to the attainment date extensions at issue here. Section 182(i) applies to the authority of the Administrator after an area has been reclassified, and relates to the setting of an attainment date for the reclassified area. It does not apply to an area that is not being reclassified, but rather is being granted an extension of its attainment date that effectively defers the applicability of the reclassification provisions. Here, EPA is authorizing an attainment date extension to relieve an area from reclassification requirements, and thus 182(i) does not apply. The section explicitly applies to an area that has already been reclassified, and indicates nothing about the authority of the Administrator to extend an area's attainment date prior to a determination that the area must be reclassified. Nor does section 182(i) indicate Congressional intent to deny EPA authority to interpret the Act consistently with provisions designed to prevent downwind areas from being forced to compensate for upwind pollution.

Comment 2: The Act does not authorize EPA to extend the time for implementation of adopted local control measures. EPA's approach allows downwind areas to defer implementation of local measures until the extended attainment deadline, thereby precluding any determination that the local measures have achieved the degree of emission reduction necessary to provide for attainment when the upwind sources are controlled. EPA unlawfully proposes to allow attainment date extensions for downwind areas to implement local control measures. Under sections 182(b)(1), 182(c)(2)(A), and 172(c)(1), downwind areas must provide for attainment of the NAAQS, and EPA unlawfully seeks to lessen these statutory obligations.

Response 2: As explained in Response 1, above, EPA's attainment date extension policy aims to effectuate, not frustrate the intent of Congress, by providing for an equitable allocation of responsibilities between upwind and downwind areas. Under EPA's interpretation, when an upwind area interferes with a downwind area's ability timely to attain the standard, the downwind area retains the obligation to adopt all applicable local measures, and to implement them as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved. Moreover, EPA requires that the area submit an approvable attainment demonstration containing any necessary, adopted local measures and showing that, assuming the appropriate upwind emission reductions, the area will attain the 1-hour standard no later than the upwind area's attainment date. Thus both the upwind and downwind areas are held accountable for their respective shares of the emissions reductions required to achieve attainment in the area. EPA views this coordination of the responsibilities of the upwind and downwind areas not as a lessening of the statutory obligations, but as a reconciliation of them with the reality of air transport as we have come to understand it, and with the intent of Congress that areas make expeditious progress towards attainment without sacrificing basic principles of fairness. The attainment date extension policy thus will still lead to attainment as expeditiously as practicable, taking into account the upwind contribution. Indeed, given the impact of the upwind area's contributions and the need for the upwind area emissions reductions, requiring local contributions earlier would not accelerate attainment, considering that EPA is requiring the downwind areas to implement local controls as expeditiously as practicable. Moreover, the difficulty until recently of assessing relative contributions and responsibilities of upwind and downwind areas lends support to extending attainment deadlines in these circumstances, even without express statutory permission. See *NRDC* v. *EPA,* discussed supra, in Response to Comment 1.

Comment 3: Reclassification alone has no immediate or mandated regulatory consequence. A SIP revision can consist of a showing that attainment will result from implementation of emission reductions already required pursuant to the SIP call. EPA's Extension Policy is inconsistent with Clean Air Act sections 179(c) and (d). This provision does not require additional local control measures beyond those previously approved and implemented by the State if adequate control measures have been adopted for upwind areas and are in the process of being implemented.

Response 3: Reclassification does impose regulatory consequences. Section 182(i) requires that ''each state containing an ozone nonattainment area reclassified under section 181(b)(2) shall meet the requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified.'' Thus the area must meet the more stringent requirements of a higher classification, including new source review offsets and changes in cutoffs for permitting. The provisions of section 181(b) apply to reclassification of ozone areas. Sections 179(c) and (d) do not apply to ozone areas that are classified as marginal, moderate, or serious, which are subject to the requirements of section 181, if EPA determines that they failed to attain the ozone standard as of the applicable attainment date pursuant to that section.

Comment 4: Sections 176A and 184 of the CAA do not support EPA's extension policy. Congress left no room in the statute for attainment date extensions for downwind areas, considering instead the additional recommended OTC control measures for upwind areas to be sufficient. Sections 110(a)(2)(D)(i)(1) and 110(a)(2)(A) do not authorize the EPA policy. Section 110(a)(2)(D) imposes a burden only on upwind states and does not relieve downwind states of their obligation to attain by the pre-set attainment dates. EPA lacks the authority to rewrite the extension authority Congress wrote into sections 181(a)(4) and (b)(3). Congress was well aware of the transport problem and addressed it in explicit provisions, including section 110(a)(2)(D), section 110(a)(2)(A), section 184, section 176A, section 126, section 182(h), and section 181(a)(4). Thus Congress knew how to address pollutant transport and how to draft an attainment date extension addressed to it when it wished to do so. It also provided for voluntary reclassification under section 181(b)(3) to be available for downwind areas if affected by transport. Congress dealt with transport explicitly in sections 181(a)(4), 182(h) and 182(j)(2). Congress knew how to exempt transport-affected areas from control requirements if it wanted to, as it did for rural transport areas under section 182(h). Congress limited relief for areas subject to transport to exemption from sanctions, but did not extend this to section 110(c) FIPs. H.R. 101–490, at 248. This shows Congress' intent to apply all of the CAA enforcement tools except for sanctions under section 179. Congress considered the effects of transport, but not in the reclassification context. Congress did provide for attainment date extensions, but not in this context.

Response 4: Having crafted provisions in the 1990 Amendments that it believed would be adequate to address the problem of downwind nonattainment, Congress did not expressly provide for an attainment date extension based on transport. But the absence of such a provision does not prevent EPA from inferring that Congress would have intended to provide such relief should the express

provisions fail to function as envisioned. In fact, the manner in which Congress did address the issue of transport shows that EPA's interpretation is consistent with Congress's approach in other sections of the Act. EPA's interpretation resolves the problem that arose when the express statutory tools failed to function as Congress had envisioned. It also, as EPA pointed out in its guidance, 61 FR 14441 (March 25, 1999), provides a means to reconcile the attainment demonstrations and attainment date requirements for downwind areas with the graduated attainment date scheme and schedule for achieving reductions in the upwind areas. Although Congress intended that upwind areas be responsible for preventing interference with downwind areas' attainment dates, it also expressly allotted more time for certain upwind areas to reduce their emissions so as to attain the standard.

EPA disagrees with commenters that Congress intended section 110(a)(2)(D) and the other transport provisions to exclude the possibility of further relief for downwind areas. These sections express Congressional intent that downwind areas not be saddled with responsibility for pollution beyond their control. Their premise was that there would be a means of redress against upwind areas prior to the downwind area's attainment date—a means that also would not be at odds with Congress's decision to provide longer attainment periods for upwind areas confronting onerous pollution problems. But, as EPA pointed out in its guidance, there was in fact no practicable way to carry out the Congressional scheme until a much more comprehensive understanding of the complex facts of ozone transport could be achieved.

Although Congress in the 1990 Amendments and in prior versions of the Clean Air Act attempted to deal with the issue of transport, the reality of the problem proved far more complicated and intractable than expected. As explained in EPA's guidance, 64 FR 14441 (March 25, 1999), and in the January 3, 2001, rulemaking granting extensions to serious areas (66 FR 586), it took many years for EPA and the states to study, analyze, and attempt to resolve the allocation of responsibility for transported ozone pollution. A detailed description of the history of efforts to address ozone transport through the 1990's may be found in the preambles to these NO_X SIP Call and Section 126 rulemakings. 63 FR 57360–63, 64 FR 28253–54.

The BPA and HG areas are not subject to the NO_X SIP call. But the analysis of transport developed for the NO_X SIP Call aided EPA and Texas in understanding the transport problem in the BPA area. See Section C, Response 2. The BPA SIP was submitted in November 1999 and supplemented in April 2000. The HG SIP was submitted in December 2000, the date for submission for all severe areas.

Thus, although Congress in the Clean Air Act had formulated a prohibition on transport interfering with downwind attainment, it remained largely theoretical until EPA and the states could understand how to identify, quantify, and analyze the transport of emissions, and develop regulatory means to coordinate the respective responsibilities of a multitude of upwind and downwind areas. Although Congress endowed EPA and the states with legal tools to protect downwind areas from interference with attainment, it did not give them the ability to use the tools in the time frame anticipated by Congress. By the time EPA and the states gained an understanding of regional transport sufficient to allow enforcement of the provisions of the Act, it was too late to help some downwind areas meet their attainment dates, including moderate areas such as the BPA area.

As set forth in Response l above, Congress intended, through enactment of the provisions addressing transport cited by commenters, to prevent downwind areas from being held accountable for pollution over which they exercise no control. Because of the complexity of the transport problem, EPA and the states could not deploy these statutory provisions in time to achieve attainment by their original attainment dates. But this does not mean that Congress would have intended EPA to construe the very provisions designed to protect downwind areas as precluding EPA from interpreting the statute to provide the relief that those provisions failed to furnish. Notwithstanding the absence of an express provision for an attainment date extension based on transport, EPA believes that, taking into account the Act read as a whole, Congressional intent supports EPA's interpretation of an attainment date extension in the circumstances presented here.

Commenters argue that the fact that Congress formulated various provisions addressing certain specific types of issues concerning transported pollution, but did not provide for an explicit attainment date extension based on transport, should be taken as proof that Congress meant to preclude such relief. But each of the provisions cited by commenters was designed to address a different problem from the one EPA addresses here, and none undermines EPA's interpretation that Congress intended to provide relief in the situations currently confronted by downwind areas. As shown in EPA's previous responses, Congress expressed its intent in the transport sections to protect downwind areas from the burdens of transported pollution, but the mechanisms it provided could not be invoked in time.

For example, section 181(a)(4) concerns the potential for adjustment of the original classification of an area if its design value is within a certain margin. It allows the Administrator to consider a number of factors, including among them transport. This provision in no way casts doubt on the Congressional intent not to penalize downwind areas through mandatory reclassification should they later fail to attain the standard due to transport. Section 182(h) provides a mechanism for original classifications of rural transport areas as marginal areas, the lowest level of ozone nonattainment areas. Far from indicating that Congress did not intend relief for areas that are victims of transport, this provision reflects Congressional concern with not burdening areas with responsibility for transport not of their making. It sheds no light on whether Congress would have intended EPA to reclassify areas suffering from transported pollution if they were subsequently unable to meet their attainment dates.

Nor, as commenters suggest, would so-called ''voluntary'' reclassification under section 181(b)(3) furnish an adequate remedy for the situation confronting areas that fail to attain due to interference from transport. An area that felt constrained to seek ''voluntary'' reclassification would still be forced to subject itself to more stringent requirements to control local pollution in lieu of imposing on upwind areas the responsibility for the transport they caused. Further, the imposition of the more stringent local controls would still not bring the downwind area into attainment. It could not reach attainment unless and until the upwind area reachs attainment and stops affecting the downwind area's ability to attain.

Comment 5: The states had power to timely submit SIPs controlling local pollution to the full extent that it was in the state's power to require, and combine it with a request to EPA to invoke EPA's authority to control upwind pollution, and in this way the state could have attained by the applicable deadline. EPA's 1994 overwhelming transport policy required transport modeling to be documented

the same time as the attainment demonstration due in 1994. There is no justification for allowing states to request attainment date extensions based on transport of which they were aware many years ago. An opening is created for upwind states to argue that the NO_X SIP call effectively accelerates their attainment dates. The OTC was to recommend measures to bring about attainment by the deadlines ''in this subpart.''

Response 5: As pointed out in EPA's Response 4, above, an awareness that transport was occurring is not equivalent to an ability to identify, analyze, and control the emissions that cause it. This ability, which grew out of years of study and joint effort, did not coalesce until 1998. Thus, downwind states and areas were faced with the prospect of having to shoulder responsibility for pollution not of their making—a responsibility that Congress did not intend to impose on them, even as they were aware of an ongoing effort, involving EPA and thirty-seven states (including Texas), to allocate responsibilities for transport through the OTAG process. As EPA stated in its guidance on the attainment date extension, the state of knowledge about and the ability to document and model transport has advanced considerably since the issuance of EPA's overwhelming transport guidance. The commenters seek to ignore the climate of uncertainty in which states and EPA were operating with respect to controlling transported pollution.

But even with the allocation of responsibilities now available, EPA believes that Congress did not intend to accelerate the obligations of upwind areas so that downwind areas can meet earlier attainment dates. This would undermine the objective, firmly embodied in the graduated attainment framework of the Clean Air Act, to allow upwind areas with more severe pollution longer attainment deadlines. Upwind areas with later attainment dates still find it difficult to reduce emissions solely to control for transport without accelerating the time frames intended by Congress. It is unrealistic to expect upwind areas to be able to segregate out the reduction of emissions for purposes of transport from the reduction of emissions for purposes of achieving attainment in the upwind area.

The fact, as a commenter points out, that Congress envisioned that the OTC-recommended measures would bring about attainment by the dates ''in this subpart'' reflects Congress'' over optimistic view that transport would be understood and controlled in time to allow upwind areas to be held accountable for their contributions to downwind nonattainment. The comment underscores that Congress expected upwind reductions to take place by the time the downwind area was supposed to attain—this confirms that Congress expected that upwind pollution would be controlled prior to downwind attainment deadlines, and that only local pollution would remain as the downwind area's responsibility. But, as we previously stated, the time line for analyzing and assessing transport, and the resulting ability to set boundary conditions for modeling attainment demonstrations, did not keep pace with Congress' expectations. EPA is extending attainment deadlines in order to allow upwind areas to assume responsibility for the pollution they generate and that is transported across State boundaries or to downwind areas within a state, and to fulfill the Congressional intent that downwind areas not be saddled with this burden.

Comment 6: EPA's decision directly conflicts with *NRDC* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994), where the Court held that EPA could not extend a clear statutory submission deadline.

Response 6: To the contrary, EPA believes that *NRDC* v. *EPA* supports EPA's authority to issue the attainment date extensions at issue here. In that case the U.S. Court of Appeals for the D.C. Circuit upheld EPA's extension of SIP submittal deadlines even though such extensions were not expressly permitted by the Clean Air Act. See the discussion in Response to Comment l, above. The Court relied in part on the need for additional time to undertake photochemical modeling to document the impact of NO_X reductions on individual areas, an effort that took more time than Congress anticipated. Here, the effort to document, model, and analyze regional ozone transport issues and assess responsibility for relative contributions is, if anything, more complex than the NO_X exemption showings for which the Court upheld deadline extensions in NRDC versus EPA. The Court's reasoning in *NRDC* v. *EPA* should be fully applicable to the policy at stake here.

Comment 7: A commenter concedes that ''EPA's delay in establishing the mandatory emission reduction targets for upwind States might justify the delay in adoption of adequate section 110(a)(2)(D) measures by the upwind states,'' but concludes that the delay ''cannot justify delaying the obligation of downwind States to implement all the local measures necessary for attainment by the statutory deadline.'' One commenter, while acknowledging that it ''does not take issue with EPA's objective of accommodating the delayed control contributions from upwind areas,'' contests EPA's claim of authority to extend attainment dates. This commenter suggests that the appropriate remedy is for EPA to authorize states to take credit for mandated emission reductions when preparing attainment demonstrations and determining the degree of local controls needed to attain.

Response 7: While the commenter recognizes that there was a delay in understanding and regulating transported pollution that ''might justify the delay'' in upwind states adopting section 110(a)(2)(D) measures, and agrees with EPA's objective in taking this delay into account, the commenter's proposed solution fails to address the problem it acknowledges. The commenter suggests allowing areas to take credit when they prepare their attainment demonstrations—but this solution addresses only the planning requirement, and does not assist the areas in solving the problem of failing to meet their attainment deadline. It is to address this issue, and to effectuate Congressional intent to avoid penalizing downwind areas in these circumstances, that EPA has formulated the attainment date extension. The delay in ascertaining the amount and achieving the reality of upwind reductions—a delay conceded by commenters—resulted in uncertainty in a downwind area's ability not only to plan for attainment, but to realize it.

This comment also highlights the difficulties that EPA's attainment date extension policy was designed to address: Namely that the states and EPA were (1) not able to assess relative contributions until it was too late to implement the controls to bring about attainment; and (2) upwind areas with longer attainment dates should not be required to accelerate their reductions in time to help bring about attainment as scheduled in affected downwind areas with earlier attainment dates. As the policy explains, the determination of relative upwind and downwind contributions, how downwind areas should model their attainment demonstrations to show the upwind areas' impact, and the allocation of responsibility for determining controls did not occur in time for a number of areas to meet their attainment deadlines.

Comment 8: EPA's approach allows emission reductions from motor vehicles to be deferred beyond the deadlines currently required by the Act. The policy allows deferral of conformity budgets beyond the statutory attainment year. It is also inconsistent with statutory requirements for reasonable

further progress in section 182(c)(2)(B), for implementation of all reasonably available control measures as expeditiously as practicable in section 172(c)(1), and for requiring that transportation plans and TIPs ''will not delay timely attainment of any standard or * * * other milestones in any area in section 176(c)(1).''

Response 8: EPA disagrees with the commenter that the policy allows deferral of reasonably available control measures beyond dates contemplated in the Act. The statute requires SIPs to provide for attainment as expeditiously as practicable and for reasonable further progress as necessary to provide for attainment. The RACM measures the commenter is apparently referring to are not specific measures that the statute requires to be implemented by a fixed date. Rather, they are whatever RACM measures, including motor vehicle measures, necessary to provide for attainment and RFP by the applicable attainment date. Thus, whatever attainment date is applicable, an attainment date extension, etc., defines the outside date by which RACM measures, including motor vehicle measures, necessary to provide for timely attainment must be implemented. A determination must then be made whether any additional measures could advance that date, but the analysis is keyed to the established attainment date. The commenter also complains about delays in establishing budgets for conformity purposes, and requirements that transportation activities not delay timely attainment. Again, these issues are not relevant to establishing an appropriate attainment date. Motor vehicle emission budgets for conformity purposes are those budgets that are established for the attainment year. The Act does not require that these budgets be set for any specific year, but rather contemplates that they will be established for the attainment year. Where EPA has properly determined that an attainment date extension should be granted, conformity budgets are required for the extended attainment year; they are no longer required for the superseded attainment year. The requirement that transportation activities not delay timely attainment is a duty imposed on transportation planning agencies to insure that their activities will not interfere with attainment of the standard by the applicable attainment date. This duty is irrelevant to establishing the appropriate attainment date in the first instance. Once an applicable attainment date is established, transportation planners must insure that their activities will not delay attainment by that date.

Comment 9: A commenter argues that under the terms of section 188(e), an extension of the PM attainment date may not be granted unless the State demonstrates that the area's SIP contains ''the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any Sate, and can feasibly be implemented in the area.'' Moreover, section 188(e) provides for consideration of transboundary emissions from ''foreign countries,'' not from U.S. sources. EPA's proposed ozone nonattainment extension policy includes neither of these limitations.

Response 9: The provision cited by commenters applies the PM–10 standard, and is not applicable to attainment dates for ozone. Moreover, the regulatory regimes applicable to ozone and PM–10 are quite different, as are the types of transport issues that arise with respect to these two different pollutants. The issues EPA and the states confront with respect to long-range regional transport of ozone do not apply to PM–10. Beyond that, section 188(e) embodies a standard of '' impracticability'' as a basis for seeking an extension for a PM–10 attainment deadline. With respect to the ozone attainment deadlines at issue here, EPA is not granting extensions solely on the grounds of impracticability of attaining the standard, but rather, that Congress intended both upwind and downwind areas to have an opportunity to bear the responsibility for their respective contributions to an area's attainment problems.

Comment 10: EPA's effort to ''manufacture a conflict'' between the statutory deadlines and transport provisions fails, since these provisions must be read together so that the upwind area's ''obligation to control pollution affecting the downwind area—be it interstate or intrastate—falls due no later than the downwind area's attainment date.'' EPA's argument that areas with longer attainment dates be given additional time ignores the statutory requirement that areas attain as expeditiously as practicable, even if that results in attainment before section 181(a)(1)'s outer deadlines. The section 181 attainment deadlines are ''outside limits.'' A commenter argues that Section 181(a) does not prevent upwind areas from abating pollution in downwind areas in time to meet the downwind area's attainment date. EPA's policy cannot be defended as necessary to reconcile 181(a) with the Act's anti-transport provisions. Upwind areas should be able to control pollution contributing to downwind area's nonattainment even before reaching their own later-prescribed attainment dates.

A commenter disputes EPA's interpretation of the language in section 110(a)(2)(D)(1) that SIP provisions prohibiting emissions which cause transport be ''consistent with the provisions of this subchapter.'' EPA should interpret the provisions to respect the attainment schedules of sections 181 and 182, and address transport separately. No reference is made to any legislative history that would legitimize EPA's reading. An upwind area's obligation to control transported pollution does not depend on its own timetable for attainment. EPA's policy excuses upwind area's responsibility from their obligations under sections 110, 176A and 184, exempting them via granting extensions to downwind areas. The policy defers downwind action until the upwind area attains.

EPA improperly assumes that it would not be practicable for upwind sources to reduce emissions contributing to downwind nonattainment prior to the time such reductions would be required to attain in the upwind area. The presumption should be precisely the opposite: unless the upwind state can show that such reductions are impracticable, EPA should assume such reductions can be made at times to eliminate the upwind state's contribution to nonattainment downwind by the downwind area's attainment date. EPA's rule eliminates the Act's requirement that attainment be accomplished as expeditiously as possible. Section 184 indicates Congressional intent that upwind areas make reductions if necessary to permit downwind areas to attain by their statutory deadlines.

Response 10: EPA disagrees with the commenter's contention that it has ''manufactured a conflict.'' Rather, EPA believes that it recognizes and resolves the real tension between the statutory deadlines and the transport provisions. EPA explained this tension in its guidance on the attainment date extension policy. See also EPA's response to Comment 4. Congress did not intend that areas with more severe pollution problems such as the HG area, and accordingly longer attainment dates, be forced to accelerate reductions on a timetable that otherwise would not be required to meet their obligation to attain ''as expeditiously as practicable.'' Commenters want EPA to read the requirement for upwind areas, not as mandating attainment ''as expeditiously as practicable''—but as requiring

deadlines that are not practicable, solely for the purpose of obtaining downwind reductions.

In dealing with ozone, a regional pollutant, an upwind nonattainment area cannot make reductions for transport purposes without affecting its schedule for making reductions for attainment purposes. Compelling the upwind area to make drastically faster reductions is akin to asking it to go on a crash diet. But the interplay of the statutory provisions on attainment deadlines and transport reduction indicates that Congress intended upwind areas to reduce transport, but not to the extent of requiring shorter schedules for upwind attainment. Separating out reductions for purposes of attainment and those for the purposes of transport is more difficult than commenters depict, and EPA believes that Congress did not intend a regimen of drastic reductions without regard to the upwind area's attainment schedule. In reality, an upwind area that remains in nonattainment may well be shown to continue to transport pollution to an affected downwind area.

Congress provided statutory tools to address the issue of transport, and believed that they would be used to reach an accommodation among upwind and downwind areas—but as EPA and some commenters have recognized, this accommodation took longer than anticipated. Congress did not, however, intend that upwind areas be forced to apply drastic measures in order to allow the downwind areas to meet their shorter attainment periods.

Although the attainment deadlines can be viewed as ''outside limits,'' they in fact represent the dates at which statutory consequences must be considered. As long as no earlier date is deemed to be ''as expeditiously as practicable,'' there is no evidence that Congress considered an earlier date to be acceptable for these areas, in disregard of ''practicability.'' Even if earlier deadlines would be beneficial to downwind areas, Congress did not indicate that this criterion should override the criterion of ''practicability'' for the upwind area.

In administering the Clean Air Act and the NO_X SIP call, EPA has interpreted section 110(a)(2)(d)'s significant contribution test as requiring reductions as expeditiously as practicable without requiring upwind areas to impose draconian measures. The United States Court of Appeals for the District of Columbia Circuit recently upheld EPA's use of a cost component in applying that section's significant contribution test. *Michigan* v. *EPA,* 213 F.3d 663, 674–679 (D.C. Cir. 2000). EPA decided that the states that were ''significant contributors'' under section 110(a)(2)(D) need only reduce their emissions by the amount achievable with ''highly cost-effective controls.'' 63 Fed. Reg. at 57403. ''Thus, once a state had been nominally marked a ''significant contributor,'' it could satisfy the statute, i.e., reduce its contribution to a point where it would not be ''significant'' within the meaning of section 110(a)(2)(D)(i)(I) by cutting back the amount that could be eliminated with 'highly cost-effective controls.' '' 213 F.3d at 675.

In applying section 110(a)(2)(D), the D.C. Circuit concluded that EPA can consider not only air quality impacts, but also costs of control. Thus EPA has been upheld in interpreting the Act in a way that limits the upwind area's responsibility to control pollution so as to mitigate its responsibility under section 110(a)(2)(D). The upwind area should not have to impose draconian controls. As the court in *Michigan* v. *EPA,* concluded, ''there is nothing in the text, structure, or history of section 110(a)(2)(D) that bars EPA from considering cost in its application.'' 213 F.3d 679. The Court's discussion makes clear that EPA, in interpreting the responsibilities of upwind states under section 110(a)(2)(D), may consider differences in cutback costs in determining what constitutes a significant contribution, and that EPA's inquiry is based on balancing a number of considerations to balance health effects and cost-effectiveness.

EPA's policy does not excuse the upwind areas from fulfilling their obligations under section 110 and part D. Upwind areas will be held to section 110, part D and RACM requirements. EPA has determined the out-of-state upwind areas' section 110 obligations through the SIP call. The SIP call requires reductions by the date EPA determined was as soon as practicable to eliminate significant contributions to downwind areas.[1] This is coupled with the upwind area's obligation to attain as expeditiously as practicable. The upwind area in this instance, the HG area, must reduce emissions as soon as practicable to eliminate its significant contribution to the BPA area. The HG area must also attain as expeditiously as practicable. It is appropriate to hold downwind areas to the upwind area's attainment date as an outside limit until EPA acts on the upwind area's attainment demonstration. The modeling evidence we have now shows that the upwind area needs to come into attainment for the downwind BPA area to attain the standard.

The BPA area is implementing local measures by 2005. The schedule is based on time necessary for the engineering and installation of control equipment on point sources during their regular maintenance and down times. This period must be as soon as possible, but such that BPA does not incur an economic hardship. This timing is appropriate and expeditious. Further, EPA recalculated the estimate of the future design values based solely on modeled days when winds are not coming from the HG area. The results indicate that the local measures in BPA are adequate to show attainment on days when transport is not an issue. This confirms that BPA has done all that they can to address the local portion of their nonattainment problem.

Comment 11: The section 182(j)(2) ''but for'' standard applies to intrastate transport. An area must demonstrate that it would have accomplished attainment but for the failure of other areas to implement sufficient controls. The policy is vague, and fails to establish clear standards for a showing of transport. The ''affected by transport'' standard is unclear.

Response 11: EPA is not constrained by the section 182(j)(2) standard. This section is limited in application to single nonattainment areas that are located in more than one state, and does not address transport coming into an area from another, separate area.

The Texas modeling for the BPA and HG modeling domain showed that there were significant impacts from the upwind area on the downwind area, no matter whether one used as a standard the ''but for,'' ''significant contribution'' or ''affected by transport'' formulation. EPA's review of the number of days when there is an exceedance in BPA for the 1990–94 data shows 41 exceedances in the BPA area, of which 16 days are when winds are from the HG area. This is more than 3 exceedances per year (three being the maximum number of exceedances allowed to still be in attainment) for BPA which are influenced by transport from HG. Given the two areas are less than 24 hours transport from each other, and the life time of ozone and its precursors, it is reasonable to believe ozone observations and emissions emitted in HG will arrive in BPA within 24 hours. This argument alone closely links the two areas. Modeling which eliminated the HG emissions and resulted in 10–30 ppb change in ozone levels in BPA, as documented in the TSD, shows HG is

[1] Because the D.C. Circuit stayed the obligation of States to submit plans by 13 months, the court also extended by 13 months the date by which sources must implement the necessary controls.

having a major impact on BPA's ability to attain the 1-hour ozone standard.

Congress intended that an upwind area that significantly contributes to a downwind area's nonattainment problem should bear responsibility for that pollution. The Texas modeling shows that significant contribution is made by the upwind area to the downwind area seeking the attainment date extension. EPA still believes that Congress would not have intended to impose the burden on downwind areas for an upwind area's contribution.

Comment 12: Transport is already incorporated into each area's section 181 design value and thus is assumed in setting the projected attainment date. Congress understood transport resulted in elevated design values, but did not authorize classifications to take into account transport, and provided for reclassification by operation of law based on air quality. In section 181(a)(1), Congress directed that ozone nonattainment areas be placed within certain classifications based solely on their design values, regardless of transport. Congress understood that many areas were classified as moderate or severe at least in part because of ozone transport, but did not grant EPA discretion to take such transport into account when establishing initial classifications under the Act. Why does EPA believe so strongly that its approach is consistent with Congressional intent, given Congress's refusal to consider transport in establishing the initial classifications and in light of sections 181(b)(2) and 182(i)?

Response 12: Section 181(a)(4) is for a discrete and limited purpose. The fact that this provision governing the initial classification process expressly takes transport into account in a specific way does not mean that EPA is precluded from taking transport into account when providing for an attainment date extension based on transport, prior to invoking the reclassification provisions. See EPA's Response to Comment 1. By providing for an extension of the attainment date, EPA is effectuating Congressional intent that the transport relief provisions have a chance to take effect before EPA has an obligation to determine whether the area has attained for purposes of triggering the reclassification provisions.

Comment 13: EPA has previously concluded that reclassification is not a means of penalizing an area, but a means of providing additional reductions that will benefit public health. EPA rejected the notion that bump-up is a penalty when it reclassified the Phoenix, Arizona area from moderate to serious. There, EPA said:

''The classification structure of the Act is a clear statement of Congress's belief that the later attainment deadlines afforded higher-classified and reclassified areas require compensating increases in the stringency of controls. The reclassification provisions of the Clean Air Act are a reasonable mechanism to assure continued progress toward attainment of the health-based ambient air quality standards when areas miss their attainment deadlines and are not punitive.''

Final Rule, 62 FR 60001, 60003 (Nov. 6, 1997). Why has EPA changed its mind about the functions of reclassification?

Response 13: EPA has not changed its mind about the function of the reclassification provision where the issue of transport is not presented. In the context of Phoenix, a reclassification not involving transport, EPA made the response cited by commenter, and noted that the reclassification provision was not intended to be punitive. This view is consistent with the position that EPA takes here, where the circumstances are quite different from the non-transport reclassification context. In the absence of transport, an area that fails to attain by its attainment date, may still fairly be held accountable for controlling local pollution, and be granted a longer attainment deadline in return for more stringent controls. Under these circumstances, applying the reclassification provisions is not punitive. But in the circumstances EPA and Texas confront here, the local area is not responsible for pollution that interferes with its ability to meet the standard. In such a case, to trigger reclassification would impose on the area the responsibility and costs for pollution beyond its control, and would indeed be punitive. To avoid such a result, and to effectuate Congressional intent, EPA has interpreted the Act to authorize an attainment date extension.

Comment 14: Congress directly considered and rejected EPA's interpretation of its attainment date extension authority during the Clean Air Act Amendments of 1990. During debate, Senator Kasten expressed concern about the proposed legislation's provisions concerning the ''issue of downwind ozone nonattainment.'' He noted that pollution from Chicago affected southeastern Wisconsin, but described ''the difficulty this poses is that the Nation's most polluted urban areas are given a much more generous timetable for meeting air-quality standards. Chicago will have 5 more years to meet air-quality standards than these Wisconsin counties will have.'' Senator Kasten then noted that because of Chicago's longer attainment date, it was likely that the Wisconsin counties ''will be found in violation of the Clean Air Act because of actions taking place outside of their jurisdiction in an upwind State.'' The commenter claims that Senator Kasten introduced an amendment which provided, among other things, for an attainment date extension for the downwind area until the upwind nonattainment area achieved emission reductions. S. Comm. On Envt. And Pub. Works, A Legislative History of the Clean Air Act Amendments of 1990, pp. 4954–55 (1993). The commenter claims that ''the amendment, was, of course, rejected.'' Thus the commenter argues that Congress, although it addressed ozone transport in sections 176A and 184, declined to alter the requirements of section 181, even though it was aware of the problem that EPA seeks to solve with its attainment date extension policy.

Response 14: There is no evidence that the amendment discussed by Senator Kasten was ever debated, considered, or voted upon. Commenter cites no support for the proposition that it was considered and rejected. Thus no inferences can be drawn from the fact that the amendment was not embodied in the statute. Moreover, even if the amendment had been considered and rejected, it differed from and went so far beyond the attainment date extension EPA is applying here as to not be probative of Congressional intent with respect to EPA's current interpretation of the Act. Among other things, it would have provided for a new and separate Ozone Transport Region, and would have provided for different obligations and consequences for downwind areas than what is contained in EPA's current interpretation of the attainment date extension policy. Legislative History at 4954–56.

Comment 15: The EPA attainment date extension policy is an illegal expansion of its 1994 overwhelming transport policy.

Response 15: The policy is not an illegal expansion of the overwhelming transport policy, but an appropriate interpretation of the provisions of the Act in order to fulfill Congressional intent. EPA's current articulation of the attainment date extension policy reflects the considerable advances in understanding and allocating responsibility for transport that have occurred since the formulation of the overwhelming transport policy. These advances have resulted from the work on ozone transport included in, among

other efforts, the OTAG, SIP Call, and area modeling programs. EPA thus regards the attainment date extension policy as superseding the overwhelming transport policy. See EPA's earlier responses.

Comment 16: Downwind areas should be required to implement, not just adopt, all required measures before becoming eligible for an extension. Modeling is imprecise and an area might be able to attain if they implement all required measures, which should already have been implemented prior to the original attainment date. A state could have timely submitted all the provisions for control of local pollution as required by sections 182(b)(1)(A)(i), 182(c)(2), and 172(c)(1) providing for the full extent of local reductions that it was in the state's power to require.

Response 16: In granting an attainment date extension for an area, EPA has determined that upwind reductions are necessary to help the area reach attainment. Thus, requiring all local reductions to be implemented prior to the time that upwind reductions are achieved would not accelerate attainment. Nonetheless, EPA has required that local reductions be implemented as expeditiously as practicable. See EPA's Guidance 61 FR 14441 (March 25, 1999). In this case, BPA has adopted and will be implementing local regulations controlling pollution from local sources, but which will not be able to bring about attainment due to pollution caused by transport due to the transport from the HG area preventing the BPA area attaining.

Comment 17: EPA's allegation that additional local measures ''will become superfluous once upwind areas reduce their contribution to the pollution problem,'' 64 FR 14444, is mistaken. First, the measures will produce public health benefits during the period prior to implementation of upwind reductions, and second the Act independently requires all areas to ''implement all reasonably available control measures as expeditiously as practicable,'' 172(c)(1), regardless of what reductions are expected from upwind areas. EPA should not allow downwind areas to postpone implementing local measures until upwind reductions are achieved. This extension is unlawful, and, because unexplained, arbitrary and capricious.

Response 17: EPA disagrees with the commenter's characterization of EPA's actions. EPA is in fact requiring downwind areas to implement the local control measures required under the classification as expeditiously as practicable, but no later than the time the upwind reductions are achieved. See EPA's Guidance, supra. To obtain an extension the area must have provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved. See also response to Comment 16, above. No measures are being postponed as a result of the area's being granted a later attainment deadline. The BPA area has not delayed or postponed the effectiveness of measures because its attainment date is being extended. Texas is enforcing its attainment measures as expeditiously as practicable. The BPA area is implementing local measures by 2005. The schedule is based on time necessary for the engineering and installation of control equipment on point sources during their regular maintenance and down times. This period must be as soon as possible, but such that BPA incurs disproportionate economic hardship. This timing is appropriate and expeditious. Further, EPA recalculated the estimate of the future design values based solely on modeled days when winds are not coming from HG. The results indicate that the local measures in BPA are adequate to show attainment on days when transport is not an issue. This confirms that BPA has done all that it can to address the local portion of its nonattainment problem. Thus EPA's interpretation is not unexplained, arbitrary, nor capricious. As EPA has explained, it seeks to reconcile and coordinate the responsibilities of the HG and BPA areas to work together to achieve attainment. However, as discussed elsewhere, EPA has applied the section 172(c)(1) RACM requirement to these areas.

Comment 18: EPA is excusing downwind areas from the requirement that nonattainment SIPs must provide for attainment of the NAAQS as provided in sections 182(b)(1)(A)(i), 182(c)(2)(A), 172(c)(1), and is also excusing them from the requirement that they implement all reasonably available control measures as expeditiously as practicable, regardless of the reductions required for attainment. EPA's attempt to lessen these obligations is unlawful and, because unexplained, arbitrary and capricious.

Response 18: EPA is not excusing downwind areas from the requirement that they submit SIPs providing for attainment. Nor is EPA excusing downwind areas from the RACM requirement. EPA's interpretation does not exclude what is necessary for attainment; rather, a reasonably available measure is required as RACM if it is needed for attainment or will advance the attainment date. EPA is enforcing this requirement, but allowing the downwind areas to take into account the control contribution of upwind areas that Congress envisioned, and that the commenters themselves acknowledge is embodied in Clean Air Act provisions, in determining the applicable attainment date. EPA is also requiring that the areas implement reasonable control measures as expeditiously as practicable. See EPA's Responses to other comments.

Comment 19: EPA's policy cannot be defended as a reconciliation of section 181(a) with the Act's anti-transport provisions. Under a proper interpretation of the Act, (1) an upwind area's SIP would ensure that the upwind area's pollution contributing to NAAQS violations in the downwind area would be controlled, no later than the downwind area's attainment date, (2) the upwind area would attain locally as expeditiously as practicable but no later than the date prescribed by section 181(a)(1) for the upwind area, and (3) the downwind area would attain locally ''as expeditiously as practicable but not later than'' the applicable date prescribed in section 181(a)(1). This reading gives effect to all of the relevant statutory provisions.

Response 19: The commenter concedes that under a proper interpretation of the Act, the upwind area's SIP would ensure that the upwind area's pollution contributing to violations in the downwind area would be controlled, prior to the downwind area's attainment date. But in the circumstances actually confronting EPA and Texas, as EPA has explained in prior responses, it was not possible without accelerating the HG area attainment date, to control upwind transport prior to BPA's original attainment date. Thus, in order to allow the upwind area its alloted time to attain, and to avoid imposing on the downwind area a burden Congress did not intend, EPA proposed interpreting the Act to adjust BPA's attainment deadlines. By adjusting the attainment date to allow the upwind and downwind areas to carry out the statutory allocation of responsibility that is acknowledged by the commenter, EPA indeed is reconciling the Act and rendering a proper interpretation.

Comment 20: No extension should be granted unless the area is as small as possible. The basis for transport should not be OTAG modeling, since better data is available.

Response 20: The boundary for the BPA nonattainment area was established and codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991; and, 61 FR 14496, April 2, 1996). The modeling done by OTAG and by EPA in the SIP call and the local modeling done in connection with the BPA attainment demonstration represent the best available modeling.

Comment 21: EPA purports to apply its policy to moderate and serious areas, but moderate areas should already have been bumped up to serious, because their attainment date was November 15, 1996, and the Act requires EPA to reclassify an area within six months of its attainment date under section 181(b)(2)(A). Thus, moderate areas should not be at issue, because such areas should be in serious status, and therefore the relevant bump-up should be from serious to severe.

Response 21: As EPA has noted, its attainment date extension policy and an adequate understanding of ozone transport were not developed until after the attainment date for moderate areas had passed. See Response to Comment 1. Nevertheless, EPA believes that to deny eligibility for the attainment date extension to moderate areas affected by transport because the policy and science were not available earlier, would work an injustice. Moreover, EPA believes that applying the policy to these areas is consistent with Congressional intent and with the Congressional approach of applying other types of attainment date extensions after an area has been unable to reach attainment. See, for example, section 181(a)(5).

Under section 181(a)(5), EPA may determine that an area has qualified for an extension after it has failed to attain in its attainment year. Section 181(a)(5) provides that EPA may grant an extension of one year (''the Extension Year'') if, in relevant part, ''no more than 1 exceedance of the [ozone standard] has occurred in the area in the year preceding the Extension Year.'' This procedure presumes that the area did not attain in its attainment year, and requires a review of data to determine the number of exceedances in the original attainment year prior to the granting of the extension. Thus, Congress knew and approved of a system for granting extensions after an area had already failed to attain according to its original schedule. EPA's granting of an extension to the BPA area after its original date for attainment has lapsed is therefore consistent with Congressional intent and the statutory scheme that Congress established in the Act.

In the case of the BPA area, EPA did not act to reclassify this area to serious after its attainment date had passed, nor does EPA believe that it would be appropriate to do so retroactively. Nor does EPA believe that it is consistent with the statutory scheme or Congressional intent to deem the BPA area, in the absence of a notice-and-comment rulemaking on reclassification, to have somehow constructively been bumped up to serious. Moreover, if EPA were to deny the BPA area the attainment date extension and reclassify the area, reclassifying the area to severe would create an injustice. The area would then be required to impose severe area requirements without ever having been afforded an opportunity to attain the standard by employing serious area requirements. Such an approach would in effect impose a retroactive reclassification to serious, coupled with a second reclassification to severe. The U.S. District Court for Washington, DC, in *Sierra Club* v. *Whitman* 98–2733 (CCK) (January 29, 2001 Order), declined to impose a retroactive reclassification in part because it would create this kind of injustice.

Comment 22: EPA's reliance on section 110(a)(2)(D)(i)(l) and section 110(a)(2)(A) for the proposition that EPA is statutorily authorized to extend attainment dates expressly set under sections 181 and 182 of the Act is erroneous. Section 110(a)(2)(A) states that each SIP shall ''include enforceable emission limitations and other control measures * * * for compliance, as may be necessary to meet the applicable requirements of this chapter.'' The provision in no way gives EPA the ability to extend the attainment dates expressly provided for under sections 181 and 182. In fact, EPA's statement that the EPA interprets section 110(a)(2)(A) to incorporate the same requirement as section 110(a)(2)(D)(i)(l) that upwind States are prohibited from interfering with the air quality of downwind states that somehow downwind states can magically ignore their attainment dates under section 110(a)(2)(A), a provision that does not even expressly deal with transport.

Response 22: The commenter mistakes the role of EPA's interpretation of section 110(a)(2)(A) in supporting EPA's attainment date extension policy. EPA simply reads section 110(a)(2)(A) as creating, in the intrastate context, a responsibility on the part of a state to control upwind pollution originating in its borders that affects another in-state nonattainment area. This responsibility is analogous to the responsibility the state has under section 110(a)(2)(D) to a nonattainment area located in another state that is affected by pollution from within the upwind state's borders. But, as EPA pointed out in its attainment date extension policy, EPA believes that this responsibility must be harmonized and read consistently with the graduated attainment date scheme that allows upwind areas with later attainment dates additional time to obtain emissions reductions. In the circumstance of an upwind area with a later attainment date, EPA believes that the upwind area should not be forced to accelerate attainment solely for the purpose of discharging its obligations to the downwind area under either section 110(a)(2)(A) or 110(a)(2)(D). EPA believes that Congress intended to authorize attainment date extensions in the downwind area when necessary to reconcile the need for upwind reductions with the timetable for attainment in the upwind area, whether that attainment area be within or outside the State.

B. Comments Received in Response to April 16, 1999, Notice

Comment 1: Among the comments received, twenty comment letters were received voicing strong statements of support for EPA not to reclassify the BPA nonattainment area from moderate to severe. No adverse comments were received. These commenters asserted that reclassification would put the economic viability of the BPA area in jeopardy. The commenters believed that the BPA area was affected by transport of ozone and ozone precursor chemicals from the HG area.

Response 1: EPA has reviewed the TNRCC SIP submittals and it is our technical opinion that Texas has demonstrated that during some BPA exceedances, ozone levels are affected by emissions from the HG area, and that the HG area emissions prevent BPA from attaining the 1-hour ozone standard prior to the time HG implements all measures necessary for HG to attain the 1-hour standard.

EPA recalculated the estimate of the future design values based solely on modeled days when winds are not coming from HG. The results indicate that the local measures in BPA are adequate to show attainment on days when transport is not an issue. This confirms that BPA has done all that they can to address the local portion of their nonattainment problem.

EPA's review of the number of days when there is an exceedance in BPA for the 1990–94 data shows 41 exceedances in the BPA area, of which 16 days are when winds are from the HG area. This is more than 3 exceedances per year

(three being the maximum number of exceedances allowed to still be in attainment) for BPA which are influenced by transport from HG. Given the two areas are less than 24 hours transport from each other, and the life time of ozone and its precursors, it is reasonable to believe ozone observations and emissions emitted in HG will arrive in BPA within 24 hours. This argument alone closely links the two areas. Modeling which eliminated the HG emissions and resulted in 10–30 ppb change in ozone levels in BPA, as documented in the TSD, shows HG is having a major impact on BPA's ability to attain the 1-hour ozone standard. BPA has adopted and will be implementing local regulations that modeling demonstrates would eliminate exceedances on those days when transport is not involved, but which will not be able to bring about attainment because transport would continue to cause a sufficient number of exceedances such that violation of the standard would continue. Transport from the HG area will prevent the BPA area from attaining. See our responses in Section (A), comments 1, 5, 10, 11, 16 and 17, regarding EPA's standard for determining the contribution of transport to the BPA area. Furthermore, EPA's Transport Policy supercedes EPA's earlier Overwhelming Transport Policy. See the response in Section (A), comments 15 and 16.

C. Comments Received in Response to December 27, 2000, Notice

Twenty-seven documents were received in response to the December 2000 notice. Twenty-six documents supported the proposed rule. These are summarized and addressed as comment 1. One document contained comments adverse to the proposed rule. The comments in that document are listed and responded to individually as comments 2 through 21.

Comment 1: Twenty-six documents were received in support of various aspects of the December 27, 2000, proposal to extend the ozone attainment date for the BPA ozone nonattainment area to November 15, 2007, while retaining the area's current classification as a moderate ozone nonattainment area. The commenters supported the EPA technical opinion that Texas has demonstrated that during a significant portion of BPA exceedances, ozone levels are affected by emissions from the HG area, and that the HG area emissions affect BPA's ability to attain the 1-hour ozone standard. Many stated their belief that the technical basis and legal rationale are sound.

Response 1: The EPA is in general agreement with the commenters who support the proposed actions in our December 27, 2000, NPR. A number of the commenters appropriately stated opinions such as: ''By proposing to extend BPA's ozone attainment date, EPA has rightfully exercised its July 16, 1998 policy regarding attainment date extensions for downwind transport areas. The technical basis and legal rationale for extending a downwind transport area's attainment date were clearly articulated in EPA's July 1998 policy memorandum and in its response to comments regarding similar proposals to extend the attainment dates of the Western Massachusetts, Washington, DC, and Connecticut nonattainment areas.'' The previous responses to comments detail our interpretation of the transport policy, our rationale for granting attainment date extensions for nonattainment areas located downwind of nonattainment areas that have attainment dates later than the downwind areas, and the relation of these interpretations to the CAA.

Comment 2: BPA has failed to attain. EPA has a statutory duty to determine that BPA has failed to meet the November 15, 1996 attainment deadline for moderate ozone areas. EPA has been in violation of the Act since that date, and is subject to a lawsuit requesting a court to order the agency to act on the finding of non-attainment. [T]he ambient air quality data demonstrate clearly that the BPA area did not meet the ozone standard and that air quality is continuously and steadily deteriorating from 1996 to today. BPA has continued to experience ozone exceedances each year since 1996 through 2000, which indicates the need for the area to adopt a stringent SIP. BPA should have been notified of their failure to attain no later than May 15, 1997. Contingency measures should have been implemented immediately, and the area reclassified from moderate to serious.

Response 2: EPA believes it is fulfilling its duties under the Clean Air Act by applying the attainment date extension to the BPA area, or in the alternative, proposing to reclassify the area.

In the proposed rulemaking published on April 16, 1999 (64 FR 18864), we proposed, as one alternative, to find, pursuant to section 181(b)(2) of the Clean Air Act, that the BPA area had failed to attain the ozone one-hour NAAQS by the date prescribed under the Act for moderate ozone nonattainment areas, or November 15, 1996. If we were to finalize such a finding, we would then have published a notice that the BPA area is reclassified from moderate nonattainment to serious nonattainment.

Alternatively, we proposed to extend the area's attainment date, providing that Texas meet the criteria of our July 16, 1998 transport policy, ''Guidance on Extension of Attainment Dates for Downwind Transport Areas.'' We stated that if Texas submitted a SIP that met the July 1998 transport policy, we would issue in a **Federal Register** notice a supplemental proposal to extend the BPA area's attainment date as appropriate. Further, if Texas did not submit a SIP that met the July 1998 transport policy, or failed to submit a SIP, we would finalize the proposed finding of failure to attain, and the BPA area would be reclassified as a serious ozone nonattainment area.

The July 16, 1998, policy memorandum entitled ''Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas,'' outlines the criteria by which the attainment date for an area may be extended. Following this guidance, and in consideration of the evolution of our understanding of ozone formation and transportation, EPA proposed the actions in the April 19, 1999, and the December 27, 2000, **Federal Registers.** The issues of the legality of the transport guidance and the guidance's relation to the CAA have been discussed in the responses to the March 25, 1999, notice, and are incorporated herein insofar as relevant. See Section VIII (A).

Overall, the BPA air quality has not steadily deteriorated over time, as stated by the commenters. TNRCC analyzed the historic air quality in the BPA ozone nonattainment area for the period of 1975 to 1999. While there is the expected sawtooth spread of data (due primarily to meteorologic time specific fluctuations) the analyses demonstrate that the area's ozone design value exhibits a general decrease since 1975 (this can be seen on Figure 6.3–2 of the April 25, 2000 BPA SIP submission). This downward trend is almost as great for the period 1991–1999 as for the earlier period. It is EPA's technical opinion that this long-term downward trend is likely to continue. In addition, the air quality will keep improving due to substantial reductions in precursor emissions in both HG and BPA, due to both state and federal emission control requirements. This includes the impacts of the implementation of the NO_X RACT and beyond-RACT NO_X rules for the BPA area.

The BPA area is implementing local measures by 2005. The schedule is based on time necessary for the

engineering and installation of control equipment on point sources during their regular maintenance and down times. This period must be as soon as possible, but such that BPA does not incur an economic hardship. This timing is appropriate and expeditious. Further, EPA recalculated the estimate of the future design values based solely on modeled days when winds are not coming from HG. The results indicate that the local measures in BPA are adequate to show attainment on days when transport is not an issue. This confirms that BPA has done all that they can to address the local portion of their nonattainment problem.

EPA's review of the number of days when there is an exceedance in BPA for the 1990–94 data shows 41 exceedances in the BPA area, of which 16 days are when winds are from the HG area. This is more than 3 exceedances per year (three being the maximum number of exceedances allowed to still be in attainment) for BPA which are influenced by transport from HG. Given the two areas are less than 24 hours transport from each other, and the life time of ozone and its precursors, it is reasonable to believe ozone observations and emissions emitted in HG will arrive in BPA within 24 hours. This argument alone closely links the two areas. Modeling which eliminated the HG emissions and resulted in 10–30 ppb change in ozone levels in BPA, as documented in the TSD, shows HG is having a major impact on BPA's ability to attain the 1-hour ozone standard.

Texas has benefitted from the OTAG/NO_X SIP call experience. From this modeling we gained a better understanding of the role NO_X emissions play in the formation and transport of ozone. Earlier we had thought local VOC was the major contributing factor, but through the regional modeling and other analyses being conducted during that time period we learned that NO_X is a significant contributor and has much longer transport distance than earlier envisioned. As a result TNRCC improved, through regional modeling to develop boundary conditions, the manner in which transported NO_X is treated. Also, during this time period they benefitted from improvements in our emissions inventories and updates to the carbon bond IV chemistry in the model (e.g., improvement in the isoprene chemistry). These improvements were necessary for us to understand the ozone problem in the BPA area.

Texas' conclusions regarding transport from the HG area were not a product of the OTAG or NO_X SIP call modeling. However, TNRCC did use the time during which OTAG met to better understand the land/sea breeze phenomenon which has added a level of complexity to the HG and BPA analysis not seen anywhere else in the country. Emissions and ozone in the HG and BPA areas are emitted into the local atmosphere where ozone formation begins, transported out over the warm air over the Gulf of Mexico where the warmer temperatures further activate the chemistry to form more ozone which is then transported back inland over both areas. So far, our meteorological models have not been able to accurately simulate this process. However, our understanding of what is happening has improved to the degree that we at least know better how to interpret the photochemical model results.

It is EPA's technical opinion that based on the weight-of-evidence and the modeling, the State's control strategy should provide for attainment by November 15, 2007.

Comment 3: EPA cannot invent rationales for the state. EPA concedes that the state has failed to adequately justify rejection of identified measures as RACM. Rather than disapproving the SIPs on that basis, however, EPA proceeds to provide its own rationales for why the states might have decided to reject these measures as RACM. EPA has no authority to proceed in this manner. The Act and EPA guidance require the states to perform the required RACM analysis, and to justify their rejection of any available control measures. EPA's role is limited to reviewing what the states have submitted, and approving or disapproving it. 42 U.S.C. 7410(k)(3); *Riverside Cement Co.* v. *Thomas*, 843 F.2d 1246 (9th Cir. 1988). EPA ''may either accept or reject what the state proposes; but EPA may not take a portion of what the state proposes and amend the proposal ad libitum.'' Id. The approach EPA is proposing is nowhere authorized by the Act. It also conflicts with the Act's requirement that SIP revisions be subjected to public notice and hearing at the state level before submission to EPA. 42 U.S.C. 7410(a)(1). If states are going to reject control measures, their decision to do so and the rationale therefor must be subject to notice and hearing at the state and local level. Indeed, EPA's own guidance emphasizes the importance of local determinations of the feasibility of specific measures as RACM. 57 FR at 13560.

Response 3: The State adopted all the measures, including the additional more stringent point source rules, it believed necessary for meeting the RACM requirement under section 172(c)(1). During the State's public comment periods on the overall SIP and its supporting rules, commenters raised the RACM requirement for the point source rules only. Commenters believed that there was no need for the more stringent point source rules. The State addressed the comment and explained why the beyond-RACT point source rules were necessary for attainment and were RACM for the BPA area. The EPA by reviewing a particular small sub-set of non-adopted control measures is not amending the SIP; EPA analyzed the non-adoption of this particular small sub-set of control measures and is approving the SIP with a conclusion that it was acceptable for the State to not adopt any further additional measures to meet the RACM requirement of the Clean Air Act.

The commenter cites *Riverside Cement* for the proposition that EPA cannot perform an analysis of whether the State's plan complies with the CAA's RACM requirement. The EPA believes that the holding of that case is inapplicable to these facts. In Riverside Cement, EPA approved a control requirement establishing an emission limit into the SIP and disregarded a contemporaneously-submitted contingency that would allow the State to modify the emission limit. Thus, the court concluded that EPA ''amended'' the State proposal by approving into the SIP something different than what the State had intended. 843 F.2d at 1248.

In the present circumstances, EPA did not attempt to modify a substantive control requirement of the submitted plan. Rather, EPA performed an additional analysis of a small sub-group of measures to determine if the plan, as submitted, fulfilled the substantive RACM requirement of the Act. The statute places primary responsibility on the States to submit plans that meet the Act's requirements. However, nothing in the Act precludes EPA from performing those analyses, and the Act clearly provides that EPA must determine whether the State's submission meets the Act's requirements. Under that authority, EPA believes that it is appropriate, though not mandated, that EPA perform independent analyses to determine whether a submission meets the requirements of the Act. The EPA has not attempted to modify the State's submission by either adding or deleting a substantive element of the submitted plan. By virtue of the supplemental RACM analysis, EPA has concluded that the State's submission contains control measures sufficient to meet the RACM requirement. EPA also believes the State's hearings sufficiently addressed

the fact that the State had not included additional control measures as RACM. This is further supported by the fact that no adverse comments were received raising the need for additional RACM.

Comment 4: Inappropriate grounds for rejecting RACM.

Comment 4(a): EPA's grounds for rejecting measures as RACM are inappropriate. EPA employed the following three grounds for rejecting measures as RACM: (a) The measures are likely to ''require an intensive and costly effort for numerous small area sources''; (b) ''due to the small percentage of mobile source emissions in the over-all inventory, some are not cost-beneficial,'' and (c) ''since the BPA [Beaumont/Port Arthur] area relies in part on reductions from the upwind HG [Houston/Galveston] area which are substantial, and the reductions projected to be achieved by the evaluated additional set of measures are relatively small, they would not produce emission reductions sufficient to advance the attainment date in the BPA [Beaumont/Port Arthur] area and, therefore, should not be considered RACM.'' None of these grounds are legally or rationally sufficient bases for rejecting control measures.

Response 4(a): The EPA's approach toward the RACM requirement is grounded in the language of the Clean Air Act. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, ''In general. Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The Act provides that the attainment date shall be ''as expeditiously as practicable but no later than * * *'' the deadlines specified in the Act. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the Act. As stated in the ''General Preamble'' (57 FR 13498 at 13560, April 16, 1992), ''The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.'' [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the Act supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13560.

The term ''reasonably available control measure'' is not actually defined in the definitions in the Act. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can reject potential measures based on local conditions including cost. 57 FR 13561.

Also, the development of rules for a large number of very different source categories of small sources for which little control information may exist will likely take much longer than development of rules for source categories for which control information exists or that comprise a smaller number of larger sources. The longer the time frame for development of rules by the State would decrease the possibility that the emission reductions from the rules in the nonattainment area would advance the attainment date earlier than would be achieved from the larger amount of reductions expected from the upwind controls of the HG area with a later statutory attainment date.

Similar to the above analysis, the EPA interpretation that potential mobile source measures may not be RACM if they represent a small percentage of mobile source emissions in the over-all inventory, is again based on the fact that these measures could not advance the attainment date. For instance, as detailed in the Technical Support Document (TSD) for this proposed action, when compared to emission reductions necessary for attainment, the emission reductions from transportation control measures (TCMs) that could potentially be implemented are only a small percentage (3.3% for NO_X) of emission reductions needed. From this analysis, EPA concludes that implementation of these TCMs would not produce emission reductions sufficient to advance the attainment date.

Comment 4(b): EPA's approach also illegally assumes that the attainment dates for these areas can be extended beyond November 15, 1999 via the Agency's downwind transport policy. Once an attainment deadline has passed, EPA must require SIPs to include all available control measures to provide for attainment as soon as possible. *Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990).

Response 4(b): As noted above, EPA concluded that RACM is linked in the language of the Clean Air Act to the attainment date. We elsewhere respond to comments that object to EPA's approval of attainment date extensions and do not restate those responses here. See Section VIII(A). Once an attainment date is set for an area, an analysis can then be made to determine whether any additional measures that may potentially be RACM would advance that attainment date. EPA is setting November 15, 2007 as the attainment date for the BPA area. We do not consider measures as RACM for the BPA area if they do not advance that attainment date. We are requiring the State to demonstrate that all local measures that are RACM are implemented as expeditiously as practicable, however.

Comment 5: Failure to quantify reductions needed to attain sooner. Even if advancement of the attainment date were a relevant test for RACMs, EPA has failed to rationally justify its claim that additional RACMs would not meet that test. To begin with, neither the Agency nor the state have quantified in a manner consistent with EPA rules and guidance the emission reductions that would be needed to attain the standard prior to achievement of emission reductions required under the NO_X SIP call.

Response 5: Elsewhere in this response to comments on the proposed approval of the 1-hour ozone SIP, EPA addresses the issue of the attainment date extension. See Section VIII(A). In that section, EPA justified the position that areas affected by transport may need additional time to attain, and in some cases may need an extension out

to either the date the NO_X SIP call will be implemented (where applicable) or the attainment date of an upwind area if it cannot attain without the reductions from the upwind area. Please note that while the commenter makes reference to the NO_X SIP call, Texas is actually not included in the NO_X SIP call. However, it should also be noted that even though they were not included, Texas still showed that transport from areas outside of the BPA area, but within the State including attainment areas, contribute to exceedances in the BPA area. Therefore, Texas included control measures for regional emissions reductions (including in attainment areas) as part of the BPA attainment demonstration SIP, in a manner similar to those undertaken by the states included in the NO_X SIP call.

For the case where the upwind area, e.g., the HG area, precludes the downwind area (e.g., BPA) from reaching attainment, it would be futile to perform analyses of whether additional emission reductions in the BPA nonattainment area itself (whether RACM or beyond RACM) would advance the attainment date when it is already demonstrated through the BPA/HG specific modeling that the BPA area cannot attain sooner than the upwind HG nonattainment area, with any combination of local measures. In addition, with regard to the local attainment modeling for the BPA area's self-generated exceedances, all local measures needed for expeditious attainment, are already or will soon be implemented. EPA considers the implementation of the local control measures (i.e., the measures within the BPA area itself) to be as expeditious as practicable. Issues concerned with timing of implementation of additional measures are also discussed above. As noted previously, EPA cannot technically distinguish which particular emissions reductions in the HG area would contribute to attainment in the BPA area.

Comment 6: Inadequate RACM analysis. EPA's RACM analysis is grossly inadequate in several key respects.

Comment 6(a): The Agency fails to provide the technical basis and calculations by which it developed its emission reduction estimates for various RACMs.

Response 6(a): EPA's RACM analysis (Appendix C to the TSD for the December 27, 2000 notice) did provide the technical basis and calculations for its emission reduction estimates for controls possible for the source categories in the emission inventory. The technical basis for the analyses and the assumptions used in the calculation of estimated emission reductions for TCMs were derived from a review of the literature on the implementation and effectiveness of TCM's.[2 3] The TCMs evaluated depend on the level of implementation. Implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCM's in order to adequately determine if it is reasonably available. EPA believes that using the midpoint level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective.

Comment 6(b): EPA's analysis looks at only a small universe of potential measures as RACM, and does not evaluate all of the measures identified in public comment and other sources. Among the controls ignored by the EPA analysis are: (a) Expansion and increased stringency of I/M; (b) diesel I/M; (c) expanded remote sensing programs; (d) CARB diesel fuel standards; (e) clean fuel vehicle programs; (f) lawn equipment replacement programs, adoption of SCAQMD controls for VOC and NO_X sources; (g) adoption of the SCAQMD rule requiring conversion of many diesel fleets to alternative fuel or clean diesel/hybrid technologies; (h) elimination of solvent decreasing; (i) limits on pesticide application during the ozone season; (j) source reduction for discharges to sewage plants; improved rule-effectiveness measures; (k) enhanced Stage II vapor recovery enforcement; (l) NO_X RACT to 25 tons per year; and (m) statewide NO_X limits. See, e.g., letter of July 6, 1999 to Gregg Cooke, EPA Region 6, the November 15, 2000 comments by David Baron to EPA Region 3, and his prior comments to EPA Region 3 on the Washington, DC SIP. It is arbitrary and irrational for EPA to assume that these measures can and will be implemented in complete isolation from one another.

Response 6(b): EPA's RACM analysis was intended to address all potential categories of stationary and mobile sources that could provide additional emission reductions that might be considered RACM. The commenter mentions a long list of measures they believe were ignored by the EPA in its analysis. However, the EPA did consider a wide range of measures, including appropriate measures from the commenters' listing, and the measures mentioned by the commenters were either not considered to be technically or economically feasible in the BPA area's situation or would not advance attainment. Examples include:

- Expansion and increased stringency of I/M—In 40 CFR section 51.350(a)(4) requires only urbanized areas with population of more than 200,000 to implement an I/M program, unless that area is in the ozone transport Region. In the final rulemaking on this, EPA said, ''the 200,000 population cut-off for basic programs is authorized by the Act because sections 182(a)(2)(B)(i) and 182(b)(4) require implementation only of an I/M program no less stringent than that required under pre-1990 EPA I/M guidance. EPA's pre-1990 I/M guidance required implementation of basic I/M programs only in urbanized areas of 200,000 population. It is true that some moderate areas would not be required to implement I/M programs if their population were under 200,000, despite the fact that section 182(b)(4) requires a basic I/M program in all moderate areas. However, the basic program that is required is a program that applies only to areas of 200,000 or more population.'' 60 FR 48032, 48033 (September 18, 1995). To now require I/M under the guise of a RACM analysis would contradict the flexibility intended by promulgation of the regulation and thwart the intent of Congress. Implementation of an I/M program would not advance the attainment.
- Diesel I/M—Due to the state of instrumentation and certification, this type of program is not presently technically and economically feasible for the BPA area and as such is not RACM.
- Expanded remote sensing programs—Remote sensing would not provide sufficient emission reductions to justify the cost of the implementation, nor would it advance attainment, for the BPA area.
- CARB diesel fuel standards—Texas has passed a low emission diesel program similar to the California diesel program and has submitted that program along with a request for a waiver of federal preemption under 211(c)(4)(C) of the CAA. The Texas program goes beyond the California program in that it also controls cetane, in addition to sulfur and aromatic hydrocarbons. If approved by EPA, it would apply in the BPA area. It should be noted that the Texas Legislature is considering a measure that would void

[2 3] Transportation Control Measures: State Implementation Plan Guidance, US EPA 1992; Transportation Control Measure Information Documents, US EPA 1992; Costs and Effectiveness of Transportation Control Measures: A Review and Analysis of the Literature, National Association of Regional Councils 1994.

this regulation. On April 23, 2001, the Texas House of Representatives Environmental Regulation Committee reported favorable on Texas House Bill 2649. Currently, section 2 of this Bill amends section 382.037(g) of the Texas Health and Safety Code. If passed by both houses of the Texas Legislature and signed by the Governor, this measure will preclude TNRCC from adopting any fuel control measure. While any loss in emissions reductions from this measure would have to be offset by Texas, lack of legislative authority would be valid rationale for not including fuel controls as reasonably available. In addition, currently, EPA is in the process of performing a comprehensive review and analysis of data to quantify the emission reduction effects of low emission diesel fuels. The outcome of this evaluation could result in a need to reconsider the emission reduction estimate used by the State in their low emission diesel rule. We expect the evaluation process to be completed by May of 2001. If the results of EPA's evaluation indicates that Texas has overestimated the emission reductions attributable to their low emission diesel rule, this measure may no longer be considered reasonably available (depending on the cost associated with low emission reductions). We would work with the State to address any shortfall in emission reductions that may be realized because of results from the evaluation. However, due to transport from HG this control measure would not advance the attainment date in the BPA area, and the modeling demonstrates that it is not needed to address the local contribution.

- Clean Fuel Vehicle programs—Texas currently has a Clean Fleet Program substitute plan that exceeds the emissions reductions requirements of the Federal Clean Fuel Fleet program. EPA recently approved this program and it is in effect in the BPA area (66 FR 9203, dated February 7, 2001).
- Lawn equipment replacement—Combining the economic impact on individuals with a small reduction in emissions with the difficulty in enforcement results in a finding that this measure would not be RACM.

The responses for the other items listed by the commenters are similar. As with the diesel and clean fuel vehicle programs listed by the commenters, the State has gone beyond requirements in several programs. EPA recognizes that many control measures, particularly TCMs, are more effective if done in conjunction with others. EPA maintains that it has considered appropriate measures for RACM for the BPA area. EPA also maintains that it would be impossible to analyze a seeming infinite set of measures for possible benefits. The EPA's analysis did look at all appropriate measures in various applicable categories and concluded that as a whole these categories and/or measures would not advance attainment or would otherwise not be reasonably available, for the BPA nonattainment area.

Comment 7: Stationary sources: The analysis of potential emission reductions from additional stationary source RACMs is flawed in several key respects.

Comment 7(a): EPA arbitrarily excluded from consideration a base percentage of the stationary source categories at smaller facilities. EPA asserts that this exclusion was based on the assumption that the contribution from these categories ''would be considered too small and too numerous to regulate individually.'' This is an arbitrary basis.

Response 7(a): EPA does not consider this exclusion (the bottom 20%) to be based on an arbitrary assumption, since it was designed to eliminate from consideration controls on a number of source categories that were not expected to yield many emission reductions. The EPA believed that controls on categories with very low emission reduction potential would not constitute RACM. The fact that the top 80 percent of the categories considered for additional controls yielded minimal (maximum 2.5 tpd) emissions reductions, validates EPA's decision not to analyze separately the bottom 20 percent of the categories, which would cumulatively have achieved fewer emission reductions. Therefore, EPA concludes that control measures applied to the bottom 20 percent of the categories are not RACM. In the case of NO_X controls for stationary sources in BPA, Texas is controlling emissions beyond levels that EPA has previously approved as RACT (defined by EPA as the lowest achievable emission rate considering technical and economic feasibility and therefore considered RACM for major sources) for utility and industrial boilers and process heaters.

Comment 7(b): Second, EPA did not consider potential additional controls on electric generating units and point source combustion sources. EPA offers no explanation for this exclusion. If the Agency is assuming that these sources are already controlled to RACT levels, that assumption is not supported by the record.

Response 7(b): EPA does believe the record supports that RACT was in place on electric generating units and point sources. The EPA proposed conditional approval of BPA NO_X RACT on October 28, 1999 (64 FR 58011), and published final conditional approval on March 3, 2000 (65 FR 11468). A direct final notice converting the conditional approval to a full approval was published September 1, 2000 (65 FR 53172). This process included two public comment periods in which no adverse comments were received.

Undoubtedly there are additional controls that could be placed on electric generating units and point source combustion sources. However, EPA believes that: (1) the implementation of the RACT requirements in the BPA nonattainment area; (2) Texas' regional measures providing for additional 50% NO_X reductions at electrical generating facilities in Central and Eastern Texas (which will affect the nonattainment area in general), and; (3) the beyond-RACT emission specifications for Electric Utility Boilers and industrial boilers and certain process heaters in the BPA area; provide a level of control that represents all reasonably available controls for these types of sources in the BPA area in question.

The EPA believes that generally, the level of NO_X emissions control required under Texas' local and regional measures (similar to the NO_X SIP call requirements in other parts of the U.S.), including controls for electric generating units (above), industrial, commercial, and institutional boilers, water heaters, small boilers and certain process heaters, is greater than the level of control presumed to be RACT by EPA under the NO_X RACT requirement. EPA acknowledges that additional controls with higher costs are available and may be cost-effective for areas other than the BPA area. Also, the control costs may not reflect other concerns for the BPA area, regarding reasonableness of control. If control levels greater than those provided by the RACT and the beyond-RACT stationary control measures already or about to be implemented were to be adopted for the BPA area, the EPA believes they would not advance the attainment date for the BPA area, particularly since this area relies heavily on NO_X controls from upwind (HG area) sources, and further local reductions within this BPA area are not needed to address local contribution. Therefore, EPA has determined that such additional controls on electric generating units and point source combustion sources do not constitute RACM.

Comment 7(c): EPA assumes that only a 44% (32–58% range) level of control is achievable for the uncontrolled emissions for industrial boilers and process heaters at 19 large stationary

sources (4 refineries reduce their NO_X by 58% and 15 chemical plants reduce NO_X by 32%). This completely unsupported claim is hard to fathom.

Response 7(c): The EPA established guidance to States in complying with the Clean Air Act's requirements for NO_X RACT in the NO_X Supplement to the General Preamble (57 FR 55620, November 25, 1992). That guidance addressed RACT for major stationary sources of NO_X. Under section 182(b)(2) of the Act, moderate and higher ozone nonattainment area SIPs (and also SIPs for all areas in the Ozone Transport Region) were already required to contain provisions for applying a reasonably available level of control for NO_X for major stationary sources. As discussed in the previous response to comment, EPA approved RACT levels for the BPA area.

For NO_X emission control for other sources, when EPA published the NO_X SIP call (63 FR 57402, October 27, 1998), EPA evaluated other levels of NO_X control for categories of stationary sources that were not included in the highly cost-effective controls assumed for establishing the level of control reflected in the Statewide NO_X emission budgets in that rule. The EPA determined that for area sources, additional NO_X controls that were technologically feasible and highly cost-effective could not be identified. The EPA determined that for small point sources, their collective emissions were relatively small and the administrative burden, to the States and regulated entities, of controlling such sources of NO_X was likely to be considerable. Nonetheless, for the purpose of the RACM analysis, EPA did assume a level of control for sources of NO_X with potential for control. In light of the lower level of confidence in information concerning NO_X controls on these sources, and the conclusion concerning cost effectiveness, however, EPA believed it had to take a more conservative approach.

The additional local BPA area control measures the State implemented results in a 44 percent level of control for the BPA area. The EPA believes this level is reasonable in light of the analysis performed for the General Preamble, the SIP call, and the BPA RACT approvals. In addition, this level is consistent with EPA guidance issued on March 16, 1994 which states that NO_X RACT is generally expected to achieve a 30–50% reduction. EPA further believes the 44 percent level of control is sufficient to bring the BPA area into attainment by the attainment extension date of November 15, 2007. This 44 percent reduction is the amount achieved by aggressive combustion modifications, and was termed ''Tier I'' level of controls by the State. The TNRCC also considered a ''Tier II'' level of controls that would have required extensive add-on controls such as Selective Catalytic Reduction (SCR). The modeling showed Tier II controls were not necessary for BPA to reach attainment for 1-hr ozone NAAQS. In addition, the HG area will be implementing major reductions in emissions to support attainment. Those ''regional'' reductions are needed for the BPA area to attain the NAAQS for ozone. Therefore, further controls in the BPA area will not advance the attainment date and are not necessary.

Comment 8: Transportation Control Measures as RACM: EPA gives virtually no consideration to the emission reduction benefits of transportation programs, projects and services contained in adopted regional transportation plans (RTPs), or that are clearly available for adoption as part of RTPs adopted for a nonattainment area. In addition, it is arbitrary and capricious for EPA not to require as RACM economic incentive measures that are generally available to reduce motor vehicle emissions in every nonattainment area.

Response 8: EPA's RACM analysis performed for the December 27, 2000, notice (Included in the TSD for the proposed rule) does consider transportation programs, projects and services that are generally adopted, or available for inclusion in a nonattainment area's regional transportation plan (RTP) and Transportation Improvement Program (TIP). The RACM analysis includes seven broad categories covering twenty-seven subcategories of Transportation Control Measures (TCMs) that represent a range of programs, projects and services that can be included in RTPs and TIPs. The inclusion of a TCM in an RTP or TIP does not necessarily mean that it meets EPA's criteria for RACM and must be included in the SIP. EPA has concluded that implementation of these TCMs would not advance the attainment date for the BPA area, and therefore are not considered RACM for purposes of the attainment SIPs for that area.

Some of these TCMs, such as parking cashout, transit subsidies, and parking pricing, are explicitly economic incentive programs. Furthermore, these categories of TCMs, as well as most of the others, could be infinitely differentiated according to criteria, such as the method of implementation, level of promotional effort or market penetration, stringency of enforcement, etc. The application of economic incentives to increase the effectiveness of a TCM is one such criterion. These implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the midpoint level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective.

Also, there are many important reasons why a state, regional, or local planning agency might implement TCMs in an integrated traffic management plan beyond whatever air quality benefits the TCMs might generate, including preserving open space, water shed protection, avoiding sprawl, mitigating congestion, and ''smart growth'' planning generally. So the fact that TCMs are being implemented in certain ozone nonattainment areas does not necessarily lead one to the conclusion that those TCMs represent mandatory RACM measures when they are analyzed primarily for the purpose of determining whether they would advance the ozone attainment date.

Due to the smaller number of mobile sources and vehicle miles traveled (VMT) in the BPA area, mobile source NO_X emissions amount to less that 20% of the total NO_X emissions for the BPA area. As such, small changes resulting from implementation of additional TCMs have a negligible effect on ozone reduction and will not contribute to acceleration of the attainment date for the BPA nonattainment area.

Comment 9: BPA area analysis: Having refused to consider a wide range of potential measures as RACM for this area, and understating the potential benefits of others, EPA asserts that available measures would not advance the attainment date in BPA because: (a) The area relies heavily on control of transported emissions and ozone; and (b) The modeling indicates that NO_X reductions are generally more beneficial in reducing ozone levels, suggesting that the area may be NO_X limited. The first point is truly irrelevant to the RACM inquiry, for all the reasons set forth above. Even if the issue is whether additional measures could advance the attainment date, that inquiry is not informed by whether the area might attain by November 15, 2007, but by whether it could attain sooner than November 15, 2007. As to the second point, the modeling does not show that NO_X reductions are inherently more

beneficial. They merely show that under some circumstances—generally involving very substantial NO_X reductions (e.g., 60% cuts or larger)—NO_X reductions might provide greater benefits per ton. The same model shows that NO_X reductions can sometimes actually lead to increased ozone levels in some cells. Even if the ozone problem in the BPA area is NO_X limited, that hardly justifies eschewing additional measures as RACM—at most it would suggest focusing more heavily on additional measures for NO_X sources as RACM.

Response 9: The sensitivity analyses that were performed by the State of Texas with the photochemical grid model for the BPA area showed that, even with small NO_X emission reductions, the ozone benefits achieved are substantially greater than the minor ozone benefits achieved from similar VOC emission reductions. Also, the results of the attainment demonstration modeling conducted by the State specifically indicate that NO_X control is particularly effective in reducing ozone levels in the BPA area. Therefore, EPA stands by its technical position that the levels of VOC reductions in the BPA area that could be achieved by additional stationary and mobile source control measures that are potentially RACM would not improve ozone levels to the point that would result in advancing the attainment date. Furthermore, EPA's analysis demonstrated that the source categories that were available for mobile NO_X controls were considered too few (even with the area's ability to benefit from NO_X controls) to advance the attainment date.

Also, EPA's analysis of levels of NO_X reductions in the BPA area that could be achieved by additional stationary source controls that are potentially RACM would have to come from a large number of small sources where EPA does not have much guidance for control, and therefore would be costly to develop. Further, implementation of these potential measures for both VOC and NO_X would not advance the attainment date due to the substantial reductions needed in the HG area. Therefore, EPA concluded that additional controls on the source categories evaluated for both VOC and NO_X should not be considered RACM.

The HG nonattainment area is classified severe-17 with an attainment date of November 15, 2007, whereas the BPA nonattainment area is classified as a moderate area. EPA is approving an attainment date extension for the BPA area precisely because the modeling shows that additional controls coming from outside the BPA area itself are needed for the BPA area to come into attainment. Other reasons why EPA does not consider additional measures to be RACM for the BPA area are discussed elsewhere in these responses to comments. Also, refer to previous responses to comments concerning the BPA attainment date and advancing an attainment date due to transport.

Comment 10: EPA's 1998 Transport Policy: Commenters believe that the so-called ''July 1998 transport policy'' is legally and technically flawed and must not be relied upon to allow further delay in responding to the Act's requirements. Assuming arguendo that the ''transport policy'' is valid, commenters believe that the evidence, information and data available to EPA surrounding the BPA area indicate that transport plays no part in at least a portion of the ozone exceedances observed in the BPA area and thus the transport policy cannot apply, even if transport is a factor in other episodes. Even EPA and the state concede that applying an analysis of back trajectories of air parcels coming into the BPA area from the HG area fails to demonstrate transport effects from HG as the sole cause of higher ozone concentrations in the BPA area. Commenters request the development of an environmental justice analysis and the incorporation of specific measures and accommodations to address the needs of particular communities that are disproportionally affected by exposure to unhealthful air quality.

Response 10: EPA has responded extensively to issues pertaining to the legality and technical applicability of the July 1998 Transport Policy in its March 1999 responses, above.

EPA disagrees with the assertion that even if the July 1998 Transport Policy is valid it does not apply, since transport does not appear to be a significant factor in some of the area's ozone exceedances. The evidence shows that absent adequate controls on transported pollution from the HG area, the BPA area will not attain the standard. The policy requires the BPA area to put in place local control measures to address local contributions to the area's nonattainment problem. However, these measures alone will not bring the BPA area into attainment due to the transport of ozone and ozone precursor compounds from the HG area. Thus, the EPA has determined that the July 1998 Transport Policy is appropriately applied in this case.

In approving the State's request for an attainment date extension for BPA, EPA did not base the decision solely on the State's back trajectory analyses. The State demonstrated the impact of ozone and ozone precursor transport from the upwind HG area counties upon the BPA area through photochemical grid modeling (i.e., CAMx).

EPA recalculated the estimate of the future design values based solely on modeled days when winds are not coming from HG. The results indicate that the local measures in BPA are adequate to show attainment on days when transport is not an issue. This confirms that BPA has done all that they can to address the local portion of their nonattainment problem. EPA's review of the number of days when there is an exceedance in BPA for the 1990–94 data shows 41 exceedances in the BPA area, of which 16 days are when winds are from the HG area. This is more than 3 exceedances per year (three being the maximum number of exceedances allowed to still be in attainment) for BPA which are influenced by transport from HG. Given the two areas are less than 24 hours transport from each other, and the life time of ozone and its precursors, it is reasonable to believe ozone observations and emissions emitted in HG will arrive in BPA within 24 hours. This argument alone closely links the two areas. In addition, five of the 41 exceedances occurred at the same BPA Monitor (BMTC). During four of these execeedances, ozone quality in the HG area on the day before, or the day of, these exceedances ranged from 107 to 140 ppb. These high levels of HG ozone, on days when the winds were from the direction of HG, further link HG area ozone and emissions with BPA exceedances. Modeling which eliminated the HG emissions and resulted in 10–30 ppb change in ozone levels in BPA, as documented in the TSD, shows HG is having a major impact on BPA's ability to attain the 1-hour ozone standard. BPA has adopted and will be implementing local regulations controlling pollution from local sources, but which will not be able to bring about attainment due to pollution caused by transport. Transport from the HG area will prevent the BPA area from attaining.

This is consistent with the criteria in EPA's July 17, 1998 policy memo entitled ''Extension of Attainment Dates for Downwind Transport Areas'', and demonstrates through modeling that transport from an upwind area with a later attainment date affects the downwind area's ability to attain the standard by its attainment date. The State has demonstrated through modeling that Beaumont-Port Arthur was affected by transport from HG emissions to a degree that affects BPA's ability to attain. In addition to photochemical modeling, the State

conducted an analysis of back trajectories to further illustrate the impact of the HG area emissions on the BPA ozone nonattainment area.

The subject of an environmental justice analysis is addressed later in response to a specific comment (see comment 18).

Comment 11: EPA has a duty to reclassify BPA immediately: The administrative record in this matter includes extensive correspondence between EPA and the state of Texas over BPA. This correspondence reflects the air quality status of BPA during the years 1997 and 1998, and includes express direction from EPA to Texas to submit a demonstration of overwhelming transport no later than May 15, 1998. Several years later, no new or substantive evidence from Texas describing the nature or extent of any transport is presented. EPA lacks the authority to ignore non-compliance and interminable foot-dragging. EPA is bound by the express requirements and structure of the Act and must reclassify BPA immediately.

Response 11: EPA has responded to issues pertaining to the interpretation of the reclassification requirements of the Clean Air Act and application of those requirements in light of developments since the enactment of the 1990 Clean Air Act in its March 1999 responses, above. See Section VIII(A), specifically the response to comment 1. The EPA is not relying on the overwhelming transport policy; that policy guidance is superseded by the 1998 transport policy. See Section VIII(A) comments 15 and 16. The 1998 transport policy reflects the latest science and modeling information, as well as EPA's application of its interpretation of the CAA. The information added by the State in the 1999 and 2000 SIP submissions adds to the record, and more clearly depicts the influence of transport on the ability of BPA to attain the NAAQS for 1-hr ozone levels. Refer to preceding responses and comment number 17 in Section VIII(A). EPA is not ignoring the issue, but has gained a new and improved understanding leading to a more equitable resolution that better executes the will of Congress as embodied in the CAA.

Comment 12: Further delays are inappropriate: EPA proposes to grant Texas time for months and years of further inaction by the proposed rule. Reclassification should occur immediately upon the conclusion of this rulemaking, i.e., by early February 2001. An emergency, partial SIP submittal should be required immediately which commits to implementing all available control strategies for stop-gap emissions reductions, including the incorporation of whatever improved NO_X rules, contingency measures, RACT fix-up and other available control strategies for adoption into a federally enforceable interim SIP. A complete SIP (with attainment demonstration, revised inventories, further enhanced control strategies, etc.) should be developed and submitted no later than 6 months after the final rule is published.

Response 12: EPA responds extensively to the issues of attainment date extension, reclassification requirements, implementation of RACM and other control measures, and the appropriateness of the SIP components submitted by the State of Texas, the subjects of this comment, throughout these responses to comments.

Comment 13: Reclassification to severe is justified: BPA's design value is not significantly decreasing, according to monitoring stations. It is experiencing degrading air quality rather than steady improvement. Reclassification to serious is inadequate to reverse this trend, and as EPA notes, BPA cannot realistically be expected to meet the 11/15/99 SIP submittal deadline, much less demonstrate attainment, even though these are the requirements of the Act. Current data demonstrates that the serious classification is not appropriate: BPA should be reclassified to severe.

Response 13: The BPA design value is decreasing. The 1-hr ozone design value for the three-year period of 1995 through 1997 is 157 ppm, while the design value for the three-year period of 1998 through 2000 is 145 ppm. In addition, overall the design value has been steadily decreasing since 1975. This is demonstrated in the State's Design Value Trend analysis, and is discussed previously in Section VIII(C) response to comment 2.

EPA disagrees with the assessment that BPA should be reclassified to severe. In our April 16, 1999, proposed rule (64 FR 18864) we proposed to find, pursuant to section 181(b)(2) of the Clean Air Act, that the BPA area has failed to attain the ozone 1-hour NAAQS by the date prescribed under the Act for moderate ozone nonattainment areas, or November 15, 1996. Alternatively, in that proposed rule, we proposed to extend the attainment date, providing that Texas meets the criteria of our July 16, 1998, transport policy, ''Guidance on Extension of Attainment Dates for Downwind Transport Areas.'' We stated that if Texas submits a SIP that meets the July 1998 transport policy, we would issue a supplemental proposal in a **Federal Register** notice to extend the BPA area's attainment date as appropriate. If Texas did not submit a SIP that met the July 1998 transport policy, or failed to submit a timely SIP, we would have finalized the proposed finding of failure to attain, and the BPA area would be reclassified as a serious ozone nonattainment area.

The State met the requisite criteria and has demonstrated that the BPA area is influenced by transport from the HG area to the extent that BPA can not attain until the HG area attains. Therefore, we are approving the BPA ozone attainment demonstration and, following the criteria of the July 1998 transport policy guidance, are extending the date required for BPA attainment compliance to the appropriate date equal to the attainment date of the upwind source influencing the BPA (downwind) nonattainment. Our previous responses fully address the validity and application of the July 1998 transport policy guidance, and our interpretation of the Clean Air Act and application of those requirements in light of developments since the enactment of the 1990 Clean Air Act. In light of this, it is not appropriate to reclassify the BPA nonattainment area as either serious or severe. Refer to Section VIII(A) comment 13, and Section VIII(C) comments 1 and 2. In any event, if the area were to be reclassified, the statute would call for reclassification to ''serious'', not severe. Refer to Section VIII(A), response to comment 21.

Comment 14: Reliance on the July 1998 transport policy is inappropriate: EPA's July 1998 transport policy is neither legally valid nor applicable to BPA. It should be ignored and instead, the Act applied as written.

Response 14: EPA has replied extensively on the validity of the July 1998 transport policy and its applicability to the BPA ozone nonattainment area in previous responses to comments, above, especially Section VIII(A), response to comment 2. Responses in Section VIII(C) (e.g., comment 9, and comment 16 to follow) discuss specifics particular to the BPA area.

Comment 15: If Houston's air pollution is actually being transported to BPA, EPA must make a SIP call to improve the HG SIP: The Act is clear that states are required to develop plans which include sufficient control strategies to mitigate and compensate for the effects of transported air pollutants. § 110(a)(2)(D), 110(k)(5). As noted above, the 7/98 transport policy is backwards: Congress clearly expected that upwind areas would be required to control emissions to the degree that these emissions would not affect

downwind areas. The state must adopt whatever controls are necessary for HG to reduce its pollution in a timely fashion and help Beaumont into attainment.

Response 15: EPA has replied extensively on the validity of the July 1998 transport policy and its applicability to the BPA ozone nonattainment area in previous responses to comments, above, especially the responses to the March 1999 Notice—Section VIII(A). In addition, as discussed previously, it is difficult to ascertain which emission reductions an upwind area might require earlier in order to bring a downwind area into attainment prior to attainment by the upwind area. Moreover, requiring control strategies in the HG area that accelerates that area's attainment date conflicts with Congressional intent to allow the HG area a later attainment date, and based on consideration of what is ''practicable.''

In response to the commenter's concern that the EPA must make a SIP call to improve the HG SIP, the EPA does not agree. We are currently operating under the Natural Resources Defense Council consent decree (*Natural Resources Defense Council* v. *Browner,* Civ No. 99–2976, November 30, 1999) for HG SIP actions. This consent decree essentially is functioning as a SIP call. The State of Texas submitted an attainment demonstration SIP for the HG area, with rules or other enforceable control measures, by December 31, 2000. This attainment demonstration SIP revision is currently under EPA review. Thus, until EPA has ruled on the sufficiency of that SIP submission, a SIP call would be premature. Per the decree, if EPA has not fully approved an attainment demonstration SIP for HG, EPA must by October 15, 2001, propose a Federal Implementation Plan (FIP). Should a FIP be proposed, the EPA must promulgate the FIP by June 14, 2002 to be in compliance with the consent decree. Previous responses found above, including the responses to the March 1999 Notice—Section VIII(A), discuss why the EPA does not believe the Act requires the HG area to shorten its attainment schedule by adopting and implementing rules on a faster schedule in order to bring the BPA area into attainment sooner. Also, reference the TSD to the December 27, 2000, proposed rule for details of the modeling evidence for transport and BPA nonattainment.

Comment 16: The ''Extension'' of the attainment date is not warranted by fact or permissible under law: EPA's legal basis for simply adjusting the attainment date under these circumstances is non-existent. Even if there were statutory authority to grant extensions, there is nothing in the notice to suggest that the area has to reduce transport to attain.

Response 16: EPA has replied extensively on the validity of the July 1998 transport policy, the granting of an extension to the attainment date for a downwind nonattainment area, and its applicability to the BPA ozone nonattainment area in previous responses to comments, above, including the responses to the March 1999 Notice—Section VIII(A).

Also, the State has submitted an approvable modeling demonstration with supporting documentation that the BPA area is affected by transport of ozone and ozone precursor compounds from an upwind source, namely the HG area. The submitted documentation successfully demonstrates that this transport from the HG area affects the BPA area's ability to attain earlier than the date that the HG area attains. There is strong evidence to support the position that the BPA nonattainment area is impacted by transport from the HG area. EPA's review of the number of days when there is an exceedance in BPA for the 1990–94 data shows 41 exceedances in the BPA area, of which 16 days are when winds are from the HG area. This is more than 3 exceedances per year (three being the maximum number of exceedances allowed to still be in attainment) for BPA which are influenced by transport from HG. Given the two areas are less than 24 hours transport from each other, and the life time of ozone and its precursors, it is reasonable to believe ozone observations and emissions emitted in HG will arrive in BPA within 24 hours. This argument alone closely links the two areas. Modeling which eliminated the HG emissions and resulted in 10–30 ppb change in ozone levels in BPA, as documented in the TSD, shows HG is having a major impact on BPA's ability to attain the 1-hour ozone standard. Local attainment modeling for the BPA and HG nonattainment areas shows that the BPA nonattainment area will need controls not only local to the BPA nonattainment area but from upwind sources (the HG area) to demonstrate attainment of the ozone NAAQS. Local modeling for 2007 relies substantively on the HG area reductions (upwind and within the modeling domain) as well as controls being implemented in the BPA nonattainment area. EPA recalculated the estimate of the future design values based solely on modeled days when winds are not coming from HG. The results indicate that the local measures to be implemented in BPA are adequate to show attainment on days when transport is not an issue. This confirms that BPA has done all that they can to address the local portion of their nonattainment problem. It has been clearly demonstrated that, until the HG nonattainment area implements local controls and comes into attainment, high ozone and precursor emissions from the HG nonattainment area will continue to contribute to exceedances and thwart attainment in the BPA nonattainment area. Reference the TSD to the December 27, 2000, proposed rule for details of the modeling evidence for transport and BPA nonattainment.

Comment 17: Weight-of-evidence Approach is so Poorly Described and Developed as to constitute a non-technical Analysis for Approving an Extension to 2007: The state's weight-of-evidence determinations are technically flawed and poorly presented in the proposed rulemaking (65 FR 81797 by relying on too many uncertainties, estimates and non-scientific methods, which make this approach entirely unacceptable and illegal. EPA needs to do a comprehensive scientific analysis of the information and not a non-scientific one in making these critical public health evaluations and decisions.

Response 17: Under section 182(b), (c)(2), and (d) of the CAA, moderate ozone nonattainment areas were required to submit by November 15, 1993, and serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' Moderate areas were therefore not required to submit an attainment demonstration SIP based upon photochemical modeling. As described in more detail below, the EPA guidance provides options for states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in

the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [4] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *.'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: A deterministic test or a statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[5]

In 1996, EPA issued guidance [6] to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved.

The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [7] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value from all sites in the nonattainment area for each of three years.[8] The three year ''design value'' represents the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies

[4] The August 12, 1996 version of ''Appendix W to Part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule which will not be in effect until the new rule is promulgated.

[5] Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[6] Ibid.

[7] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: http://www.epa.gov/ttn/scram.

[8] EPA relies on this averaging only for purposes of determining one component, *i.e.*—the amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance identifies a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a relationship between ozone and the precursors. The Act and the regulations do not mandate nor does EPA guidance suggest that States must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with Section 182(c)(2)(A).

The State provided an array of weight-of-evidence analysis to support the probability of attainment of the NAAQS in November, 2007. These analyses were in accordance with the guidelines and procedures discussed above. Analyses included future design value calculations, design value trends, spatial and temporal modeling metrics, and several other measures not included in the attainment demonstration CAMX modeling. Specifically, the future design value calculations indicated a calculated future design value of 115.4 parts per billion (ppb), below the NAAQS value of 124 ppb. The design values trend analysis demonstrates a general decrease in design values from 1975 through 1999. The spatial and temporal modeling shows an overall 87 percent improvement in ozone exceedance days for the 2007 post-control case as compared to the 1993 base case. In addition, other items in the WOE analysis provided for additional emissions reductions on top of those included in the CAMX modeling.

In addition to the summary discussion provided in the proposed rulemaking notice (65 FR 81797), the weight-of-evidence approach is discussed in more detail in the TSD to the December 27, 2000, notice and the supporting documentation submitted by the State. Also, it must be understood that the WOE analysis is used for additional analyses based on a composite of the information, not on a single element. The State analyzed, and the EPA considered, these analyses in the aggregate in assessing whether the State has provided sufficient evidence that corroborates further the attainment demonstration. It is the EPA's technical opinion the State's analyses of air quality and emission trends do provide additional support for the State's attainment demonstration. Progress in air quality improvement through recent periods is demonstrated and future progress in air quality improvement is shown. In addition, these analyses lend support to a regional NO_X reduction as a reasonable approach to achieving attainment of the ozone standard. Based on the weight-of-evidence and the modeling, the control strategy should provide for attainment by November 15, 2007.

Comment 18: In addition to the fundamental attainment issues, commenters believe that the emissions reductions strategy contained in the applicable SIP for the BPA area must consider and accommodate disproportionate effects on minority and disadvantaged communities, i.e., environmental justice issues.

Response 18: Commenters' assertion that minority and low-income populations in Jefferson, Hardin and Orange counties are exposed to higher levels of ozone that other residents of the BPA area is not supported by the available data. In addition, the air quality for the entire BPA area will reflect levels below the ozone NAAQS once attainment is realized. Moreover, an evaluation of the available air quality data for the BPA for the years 1998–2000 indicates that fewer exceedances occurred in areas with minority and low-income populations than did for areas with relatively high non-minority and non-low-income populations. EPA therefore finds that this rulemaking is consistent with Executive Order 12898 and does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Commenters also contend that the provisions of 40 CFR 7.35(a)(3) proscribe EPA's administration of the air quality program in a discriminatory manner. EPA regulations at 40 CFR Part 7 implement Title VI of the Civil Rights Act of 1964, as amended, and prohibit recipients of EPA assistance from discriminating on the basis of race, color or national origin, among other things. Title VI and the Part 7 regulations apply to the programs and activities of recipients of EPA assistance, but not to actions taken by federal agencies. Therefore, the requirements of 40 CFR Part 7 do not apply to the action EPA is taking today. [9] More importantly, as noted above, EPA concludes that this action does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Finally, commenters make a number of factual allegations about the demographics and health of poor and minority populations in the BPA nonattainment area and across the country. However, commenters did not provide EPA with any concrete references or resources to support these allegations. Therefore, EPA is not responding to these unsupported factual allegations.

Comment 19: BPA needs Reasonable Further Progress: Reasonable further progress is not being provided for in the BPA area due to the state's failure to require the CAA minimum 3%-per-year rate-of-progress reductions, even though the statute clearly requires these basic reductions. This failure violates the rate-of-progress requirements in the statute. EPA needs to enforce this requirement of the Act.

Response 19: Since the BPA ozone nonattainment area is classified as a moderate nonattainment area, the State was required to submit as a revision to the SIP a 15% Rate-of-Progress (ROP) plan for the BPA area. CAA Section 182(b)(1). This 15% plan meets the reasonable further progress requirements for a moderate ozone nonattainment area. The 15% plan was submitted and subsequently approved by the EPA. 63 FR 06659, February 10, 1998. The reasonable further progress requirement cited by the commenter (3%-per-year ROP reductions) does not apply to a moderate ozone nonattainment area. The 3%-per-year ROP measure is an additional reasonable further progress requirement for serious and above ozone nonattainment areas, which becomes effective for those areas after the 15% requirement is submitted. CAA Section 182(c)(2)(B). Since, with this rulemaking the EPA is approving the Attainment Demonstration SIP revision, extending the attainment date, and is not reclassifying the BPA ozone nonattainment from its present classification of moderate to serious or

[9] EPA notes that commenters reference a Title VI administrative complaint regarding the Exxon-Mobil Beaumont refinery-chemical plant complex. The complaint, which is dated April 13, 2000, involves a permitting action by the Texas Natural Resources Conservation Commission. EPA's Office of Civil Rights is responsible for the Agency's administration of Title VI and is still processing this complaint. As a result, the complaint is not germane to the SIP action taken today by EPA pursuant Clean Air Act section 110.

above, the additional 3%-per-year ROP component of the reasonable further progress requirements of the CAA does not apply in the case of the BPA area.

On the other hand, the HG December 2000 SIP revision submission includes the required Post-1999 ROP Plans for the HG area through 2007. Because of the impact of the HG area upon the BPA area's air quality, through transport of ozone and ozone pre-curser compounds, the fact that the HG area's plan includes the 3% ROP requirements will ensure that the air quality in BPA improves at a steady pace.

Comment 20: Contingency Measures needed if State fails to show Progress: The lack of contingency measures is unacceptable and illegal. The extension for the BPA area requires that the area do nothing if the state fails to show progress, therefore EPA needs to require the state to adopt a set of contingency measures.

Response 20: First, the EPA believes the contingency measure requirements of Section 172(c)(9) are an independent requirement from the attainment demonstration requirements under Section 172(c)(1) and the rate-of-progress (ROP) requirements under Sections 172(c)(2) and 182(b)(1)(A). The contingency measure requirements are to address the event that an area fails to meet a ROP milestone or fails to attain the ozone NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS or the required ROP reductions toward attainment. The attainment or ROP SIP provides a demonstration that attainment or ROP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if attainment or ROP is not actually achieved. Therefore, the EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is generally necessary before EPA may approve an attainment or ROP SIP, or that contingencies submitted previously, and still in effect, need be restated in the attainment demonstration SIP. However, where EPA is granting an attainment date extension, as in BPA, EPA's policy requires that areas meet all of the requirements applicable to the areas' classification. Further, as discussed below, the BPA area has met its ROP contingency measures requirements.

The State of Texas has previously submitted contingency measures applicable to the BPA nonattainment area. These measures were submitted with the 15% ROP SIP revision and approved by EPA. 63 FR 6659, February 10, 1998. The State meets the requirements of the CAA for a moderate area's ROP contingency measure submittals. These contingency measures include the triggering of the lower major source threshold for the application of RACT controls for certain source categories. These contingency measures were submitted previously, approved by EPA, and remain in effect. Therefore, the BPA area meets the ROP requirements applicable to its classification.

Comment 21: HG area may not attain by 2007 due to series of industry-business lawsuits filed January, 2001 opposing the HG SIP: Ability of the BPA area to attain by November 15, 2007 is now threatened by lawsuits in HG to oppose the major stationary source NO_X reductions required for the HG area's 2007 attainment. Delays will impact attainment for the BPA area since the state is relying heavily on reductions in the HG area for improving air quality.

Response 21: The commenter is correct in stating there are currently pending lawsuits challenging several rules included in the HG area SIP. They also correctly point out that delays in effective dates of these rules could impact attainment for the BPA area. The lawsuits are pending and final resolutions have not been made. As such, the provisions of the regulations have not been invalidated. For the purpose of this SIP revision approval, the HG area measures necessary for HG to attain the ozone NAAQS levels, preparatory for the BPA area's attainment of the Ozone NAAQS, stand.

Under the consent decree, if EPA has not fully approved an attainment SIP for the HG area, then EPA must, by June 14, 2002, promulgate a FIP.

IX. EPA Action

EPA is taking the following actions on the State submittals of November 12, 1999, and April 25, 2000:

1. EPA is approving the ground-level one-hour ozone attainment demonstration SIP for the BPA, Texas ozone nonattainment area.
2. EPA is approving the State's request to extend the ozone attainment date for the BPA ozone nonattainment area to November 15, 2007 while retaining the area's current classification as a moderate ozone nonattainment area.
3. EPA is approving the on-road motor vehicle emissions budgets.
4. EPA finds that the BPA area meets all remaining outstanding VOC RACT requirements for major sources.

The EPA also approves the State's enforceable commitment to conduct a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004. If the subsequent analyses conducted by the State as part of the mid-course review indicate additional reductions are needed for BPA to attain the ozone standard, EPA will require the State to implement additional controls as soon as possible until attainment is demonstrated through an approvable attainment demonstration.

X. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective June 14, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 30, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. In § 52.2270, four entries in the ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' table in paragraph (e) are added, after the last listing in the table, to read:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Attainment Demonstration for the 1-hour Ozone NAAQS.	Beaumont/Port Arthur, TX	04/19/00	5/15/01	66 FR 26939
Ozone Attainment Date Extension to 11/15/07	Beaumont/Port Arthur, TX	04/19/00	5/15/01	66 FR 26939
Commitment by Texas to perform a mid-course review and submit a SIP revision by 05/01/04.	Beaumont/Port Arthur, TX	04/19/00	5/15/01	66 FR 26939
Finding that BPA area meets VOC RACT requirements as of 5/15/01.	Beaumont/Port Arthur, TX	04/19/00	5/15/01	66 FR 26939

* * * * *

[FR Doc. 01–11564 Filed 5–14–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
May 15, 2001

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Electrical Cables; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9633; Notice No. 01–03]

RIN 2120–AH29

Electrical Cables

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning electrical cables. This proposal would harmonize part 25 and JAR–25 requirements concerning cable installations and clarify the cable design requirements ensuring that the designer considers the critical conditions, routings, and markings of a proper installation. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before July 16, 2001.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–9633 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–9633.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov.*

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2315 facsimile 425–227–1320, e-mail steve.slotte@faa.gov.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

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Background

What Are the Relevant Airworthiness Standards in the United States?

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Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
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What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry (including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)) proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested a number of editorial changes, which have been incorporated into this NPRM.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this notice, the FAA proposes to amend § 25.1353, concerning electrical cables.

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement gives design requirements relating to the proper installation of aircraft electrical equipment, controls, wiring, cables, and storage batteries. The operation of any one unit or system of units must not affect the operations of any other electrical unit or system essential to the safe operation of the airplane.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1353 addresses the proper installation of

electrical equipment, controls, wiring, cables, and storage batteries to prevent any hazardous effect on the airplane structure or essential systems.

There is no current text for 14 CFR 25.1353(d).

The current text of JAR–25.1353 contains an additional requirement in paragraph (d), which states:

JAR 25.1353 Electrical equipment and installations

* * * (d) Electrical cables and cable installations must be designed and installed as follows:

(1) The electrical cables used must be compatible with the circuit protection devices required by JAR 25.1357, such that a fire or smoke hazard cannot be created under temporary or continuous fault conditions.

(2) Means of permanent identification must be provided for electrical cables, connectors and terminals.

(3) Electrical cables must be installed such that the risk of mechanical damage and/or damage caused by fluids, vapors, or sources of heat, is minimized.

What Are the Differences in the Standards and What Do Those Differences Result In?

Section 25.1353(a), (b), (c) of part 25 does not address the aircraft installation design requirements of electrical cables. JAR 25.1353(d), however, provides very explicit aircraft installation design requirements for electrical cables.

What, if Any, Are the Differences in the Means of Compliance?

Part 25 does not have a specific requirement for installation design requirements for electrical cables. However, installation designs approved under part 25 typically meet the JAR requirement. The JAR states specific requirements for cable installations that must be met. Installation designers, through experience, have adopted the practice of permanent identification, protection, and installation routing to minimize the risk of damage to electrical cables.

What Is the Proposed Action?

The proposed action is to revise part 25 by adopting the text of JAR–25.1353(d) in its entirety. The proposed revision would specify a design action to be taken, and remove the possibility that a designer may not consider a critical installation design condition. It is in line with current best design practices.

How Does This Proposed Standard Address the Underlying Safety Issue?

The new § 25.1353(d) would clarify the cable design requirements, in the same manner as the current JAR, by ensuring that the designer considers the critical conditions, routings, and markings of a proper installation.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard is more stringent in that it adds a requirement that is not currently in § 25.1353. However, current industry practice is to comply with both standards.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety since current industry practice is to comply with both standards.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the adoption of JAR 25.1353(d) in its entirety the most appropriate way to maintain the level of safety.

Who Would Be Affected by the Proposed Change?

The proposed standard is in line with current design practices and the effect of the change is considered to be minimal for aircraft operators, modification centers, service centers, and manufacturers.

Is Existing FAA Advisory Material Adequate?

There is no advisory material for either part 25 or the JAR. The FAA considers developing new advisory material to be unnecessary.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no substantial costs, and that it is not ''a significant regulatory action'' as defined in Executive Order 12866, nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. The FAA provides the basis for this minimal impact determination below.

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as ''harmonization.''

This proposal would harmonize § 25.1353 to the JAR by adopting JAR 25.1353(d) in its entirety. The JAR requirement states specific requirements for cable installations. This section clarifies the cable design requirements

ensuring that the designer considers the critical conditions, routings, and markings of proper installations.

Industry practice is to use the JAR requirements for installation, and therefore, the addition of this language to part 25 will not add a burden to the manufacturers. Aircraft manufacturers currently use several approved standards or specifications to ensure that design and installation of electrical cables are in compliance with the JAR standards.

Standards used by the manufacturing industry, for example, are based on MIL–W–5088L or SAE ARP 5088 and FAA guidance material which includes AC 25–16 and AC 43.13–1B. These standards provide guidance for the design process from wire specification through the installation of wiring and wiring devices used in airplanes. (Wiring within that specification is defined as wires, cables, groups, harnesses and bundles, and their terminations, associated hardware, and support installed on aircraft.)

It is standard industry practice for aircraft and wiring manufacturers to test electrical cables before installation and the aircraft manufacturer also tests the electrical cables upon installation. Manufacturers are also using the JAR and § 25.1357 as a means of ensuring that the electrical cables and wiring used are compatible with the circuit protection devices required by that regulation to prevent a fire or smoke hazard created under temporary or continuous fault conditions.

The FAA has concluded that, for the reasons previously discussed in the preamble, the adoption of these JAR requirements into 14 CFR part 25 is the most efficient way to harmonize these sections. Additionally, adopting this proposal would neither reduce nor increase the requirements beyond those that exist in the current FAA published regulations.

Thus, the FAA expects that there would be no additional costs to part 25 manufacturers, and the level of safety would be maintained. The FAA requests comments to the contrary, identifying additional testing, time, procedures, paperwork and cost estimates.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category aircraft manufacturers meet just the ''more stringent'' European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the proposed rule and has determined that it supports the Administration's free trade policy because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined there are no requirements for information

collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communication that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

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

2. Amend § 25.1353 by adding paragraph (d) to read as follows:

§ 25.1353 Electrical equipment and installations.

* * * * *

(d) Electrical cables and cable installations must be designed and installed as follows:

(1) The electrical cables used must be compatible with the circuit protection devices required by § 25.1357 such that a fire or smoke hazard cannot be created under temporary or continuous fault conditions.

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(3) Electrical cables must be installed such that the risk of mechanical damage and/or damage caused by fluids, vapors, or sources of heat, is minimized.

Issued in Renton, Washington, on May 3, 2001.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12105 Filed 5–14–01; 8:45 am]

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Federal Register

Tuesday,
May 15, 2001

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Airspeed Indicating System Requirements for Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9636; Notice No. 01–05]

RIN 2120–AH26

Airspeed Indicating System Requirements for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning the airspeed indicating system. This proposal would add airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply, would add a requirement that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff, and would also add a requirement to limit the effects of airspeed lag. Adopting this proposal would eliminate a regulatory difference between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before July 16, 2001.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2001–9636, at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–9636.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov.*

You may review the public docket containing comments on this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–1129; facsimile 425–227–1320, e-mail *don.stimson@faa.gov.*

SUPPLEMENTARY INFORMATION:

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The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA, in March 1999, agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope

For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or Near Complete

For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize

For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested a few editorial changes, which have been incorporated into this NPRM.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this notice, the FAA proposes to amend the airspeed indicating system requirements of § 25.1323.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The underlying safety issue is to prevent hazardously misleading airspeed information from being presented to the flightcrew. To this end, § 25.1323 specifies the accuracy and calibration requirements and the speed ranges over which each airspeed system must be calibrated. In addition, each airspeed system must be designed and installed so as to minimize the possibility of malfunction by the entry of foreign material, by icing, or due to a collision with a bird.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1323(c) is:

(c) The airspeed error of the installation, excluding the airspeed indicator instrument calibration error, may not exceed three percent or five knots, whichever is greater, throughout the speed range, from—

(1) V_{MO} to 1.3 V_{S1} with flaps retracted; and

(2) 1.3 V_{S0} to V_{FE} with flaps in the landing position.

The text of JAR–25.1323(c), Chg. 14, Orange Paper 96/1, is:

(c)(*1*)The airspeed error of the installation, excluding the airspeed indicator instrument calibration error, may not exceed three percent or five knots, whichever is greater, throughout the speed range, from—

(*i*) V_{MO} to 1.3 V_{S1} with wing-flaps retracted; and

(*ii*) 1.3 V_{S0} to V_{FE} with wing-flaps in the landing position.

(2) From 1.3 V_S to stall warning speed the IAS must change perceptibly with CAS and in the same sense, and at speeds below stall warning speed the IAS must not change in an incorrect sense. (See ACJ 25.1323(c)(2).)

(3) From V_{MO} to $V_{MO}+\frac{2}{3}(V_{DF}-V_{MO})$ the IAS must change perceptibly with CAS and in the same sense, and at higher speeds up to V_{DF} the IAS must not change in an incorrect sense. (See ACJ 25.1323(c)(3).)

(4) There must be no indication of airspeed which would cause undue difficulty to the pilot during the take-off between the initiation of rotation and the achievement of a steady climbing condition.

Note: This proposal harmonizes § 25.1323(c) with JAR–25.1323(c) at JAR Chg. 14. The FAA expects to achieve harmonization at Chg. 15, effective October 2000, through separate rulemaking that is currently underway.

What are the Differences in the Standards?

JAR paragraphs 25.1323(c)(2), (3), and (4) contain requirements for speeds greater than and less than the speed range for which accuracy requirements apply. Part 25 does not have these additional requirements.

At speeds up to $\frac{2}{3}(V_{DF} - V_{MO})$ and less than the stall warning speed, JAR paragraphs 25.1323(c)(2) and (3) require the indicated speed to change perceptibly and in the same sense as the calibrated airspeed. At speeds up to V_{DF}, the indicated airspeed must not change in an incorrect sense. In other words, the indicated airspeed should not go down when the actual airspeed is going up.

JAR paragraph 25.1323(c)(4) states that between the initiation of rotation and the achievement of a steady climbing condition during takeoff, there must not be an airspeed indication that would cause the pilot undue difficulty. An example of such an indication would be a significant pause or change in the rate of change in airspeed. Such effects could result from changes in the airflow pattern around the airplane due to the diminishing effect of the ground on the airflow pattern as the airplane climbs away.

The JAR standard is more stringent than part 25. An airspeed indicating system that complies with JAR 25.1323(c) ensures compliance with § 25.1323(c), but a system that complies with § 25.1323(c) may not comply with JAR 25.1323(c). Therefore, a system designed to comply with § 25.1323(c) may need to be modified to comply with JAR 25.1323(c).

What, If Any, Are the Differences in the Means of Compliance and How Have the Standards Been Applied?

In general, where the standards are the same, the FAA and JAA accept the same means of compliance. For the additional requirements contained in JAR–25, the JAA has published advisory material providing an acceptable means of compliance. For showing compliance with JAR 25.1323(c)(2), the rate of change of IAS with CAS should be not less than 0.75 from 1.3 V_S to the stall warning speed. For showing compliance with JAR 25.1323(c)(3), the rate of change of IAS with CAS should be not less than 0.5 from $V_{MO}+\frac{2}{3}(V_{DF}-V_{MO})$. The JAA does not have specific advisory material associated with JAR 25.1323(c)(4).

What Is the Proposed Action and How Does it Address the Underlying Safety Issue?

The FAA proposes to revise § 25.1323 to add the additional airspeed system indication requirements of JAR 25.1323(c)(2), (3), and (4).

In addition, a new requirement is proposed concerning airspeed lag. With the advent of electronic instruments in the cockpit, the pneumatic signals from the pitot and static sources are processed and digitized in the Air Data Computer (ADC) and then filtered and transported to the cockpit display. Data processing and filtering cause a time lag in displaying the airspeed on the cockpit display. This can be an important consideration in the airspeed indicating system calibration during ground acceleration. As stated in § 25.1323(b), the calibration for an accelerated takeoff ground run must determine the ''system error,'' which is the relation between indicated and calibrated airspeeds. The system error is the sum of the pneumatic lag in the pressure lines, airspeed lag due to time lags in processing the data, and static source, position error.

The FAA considers adding these requirements to part 25 necessary to harmonize the actual wording of part 25 with the JAR on the issue of stall warning speeds, and to clarify the intent of the part 25 regulation. This addition would align the U.S. regulations with their European counterparts, and the wording of both airworthiness standards would be parallel in this respect. Furthermore, the addition of the airspeed lag requirement would codify what is current FAA policy. The JAA intends to add the airspeed lag requirement to JAR–25.

Adoption of this proposal is intended to benefit the public interest by standardizing the requirements, concepts, and procedures contained in the U.S. and European airworthiness standards without reducing, but potentially enhancing, the current level of safety.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard continues to address the underlying safety issue in the same manner as the current standard. The additional JAR standards have been added for the purpose of harmonization.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard increases the level of safety relative to 14 CFR part 25

by incorporating the additional JAR requirements. The additional requirement regarding airspeed lag codifies current FAA policy.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

Since industry practice is to comply with both the FAR and the JAR, the proposed amendment would neither add any new or different objective to the current regulations, nor change the way that any current certification practice is applied. Instead, the intent of the new paragraphs is to clarify and codify the way that the FAA and JAA have traditionally applied the related rules.

What Other Options Have Been Considered and Why Were They Not Selected?

Various options regarding the split between rule and advisory material were discussed to achieve the safety objective while ensuring flexibility in the means of compliance.

The FAA considered incorporating the JAR acceptable means of compliance material for the proposed speed requirements in the rule; however, it was decided that this would be too prescriptive and that it would preclude the use of other means of compliance that could also be found acceptable.

Another consideration was to include quantitative limits on the allowable level of airspeed bias and takeoff/accelerate-stop distance errors in the proposed airspeed lag requirement. ARAC concluded, and the FAA agrees, that the ''one size fits all'' approach does not work well here. A speed bias that varies may be significant for one airplane and not for another. A similar argument applies to the takeoff and accelerate-stop distance errors. Also, other mitigating factors may be more difficult to consider if prescriptive, quantitative values are included in the standard.

Finally, the ARAC working group considered retaining the airspeed lag policy as policy only and not including it as a regulatory standard. The working group determined that this means of compliance did not have a specific regulatory standard against which it was applied. The FAA agrees with the working group's determination that a regulatory standard is necessary to assure that future certifications continue to consider airspeed lag issues.

Adopting this proposal would eliminate an identified Significant Regulatory Difference (SRD) between the wording of part 25 and JAR–25, without affecting currently accepted industry design practices. The FAA expects more consistent interpretations of the rules and improved relations between regulatory authorities by eliminating this SRD.

Is Existing FAA Advisory Material Adequate?

To address the additional JAR requirements proposed for § 25.1323, the FAA plans to issue a revision to Advisory Circular (AC) 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes.'' The proposed revision would add the means of compliance currently accepted by the JAA as an acceptable means of showing compliance with the proposed revision to § 25.1323 discussed in this NPRM. AC 25–7A already contains adequate advisory material concerning the airspeed lag issue. Public comments concerning the proposed revision are invited by separate notice in this issue of the **Federal Register**.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no costs, and that it is not ''a significant regulatory action'' as defined in the Executive Order 12866 nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

Because there are no apparent costs associated with this proposed rule, it does not warrant the preparation of a full economic evaluation for placement in the docket. The basis of this statement and for the above determinations is summarized in the following paragraphs. The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category airplanes in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane, often with no increase in safety. In the interest of fostering international trade, lowering the cost of airplane development, and making the certification process more efficient, the FAA, JAA, and airplane manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as ''harmonization.''

This proposal rule would revise the airspeed indicating requirements of § 25.1323 to add airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply, would require that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff, and would also codify current FAA policy concerning airspeed lag. The FAA has concluded that, for the reasons previously discussed in the preamble, the adoption of these JAR requirements into 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

The FAA estimates that there are no costs associated with this proposal. A review of current manufacturers of transport category airplanes certificated under part 25 has revealed that all such future airplanes are expected to be certificated under both 14 CFR part 25 and JAR–25. Since future certificated transport category airplanes are

expected to meet the existing JAR requirement and this proposed rule simply adopts the same JAR requirement, manufacturers would incur no additional cost resulting from this proposal.

In fact, manufacturers are expected to receive cost-savings by a reduction in the FAA/JAA certification requirements for new airplanes. The FAA, however, has not attempted to quantify the cost savings that may accrue due to this specific proposal, beyond noting that, while they may be minimal, they contribute to a large potential harmonization savings.

The agency concludes that, since there is consensus among potentially affected airplane manufacturers that savings would result, further analysis is not required.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category airplane manufacturers meet just the ''more stringent'' European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport-airplane category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for airplane manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries, and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the proposed rule and has determined that it supports the Administration's free trade policy because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major

regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in 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.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

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

2. Amend § 25.1323 by redesignating paragraphs (d) through (f) as paragraphs (h) through (j) and revising them, and adding new paragraphs (d) through (g) to read as follows:

§ 25.1323 Airspeed indicating system.

* * * * *

(d) From 1.3 V_S to the speed at which stall warning begins, the IAS must change perceptibly with CAS and in the same sense, and at speeds below stall warning speed the IAS must not change in an incorrect sense.

(e) From V_{MO} to $V_{MO}+\frac{2}{3}(V_{DF} - V_{MO})$, the IAS must change perceptibly with CAS and in the same sense, and at higher speeds up to V_{DF} the IAS must not change in an incorrect sense.

(f) There must be no indication of airspeed that would cause undue difficulty to the pilot during the takeoff between the initiation of rotation and the achievement of a steady climbing condition.

(g) The effects of airspeed indicating system lag may not introduce significant takeoff indicated airspeed bias, or significant errors in takeoff or accelerate-stop distances.

(h) Each system must be arranged, so far as practicable, to prevent malfunction or serious error due to the entry of moisture, dirt, or other substances.

(i) Each system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(j) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

Issued in Renton, Washington, on May 2, 2001.

Lirio L. Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12103 Filed 5–14–01; 8:45 am]

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Federal Register

Tuesday,
May 15, 2001

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Design and Installation of Electronic Equipment on Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9638; Notice No. 01–07]

RIN 2120–AH28

Design and Installation of Electronic Equipment on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning the design and installation of electronic equipment. The proposal would require that such equipment be designed and installed so that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before July 16, 2001.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–9638 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–9638.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov.*

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2315; facsimile 425–227–1320, e-mail steve.slotte@faa.gov.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the *GPO's* web page at *http://www.access.gpo.gov/nara.*

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, ''Notice of Proposed Rulemaking Distribution System,'' which describes the application procedure.

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What is ''Harmonization'' and How Did it Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent.

Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does it Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope

For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or Near Complete

For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize

For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested a number of editorial changes, which have been incorporated into this NPRM.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this notice, the FAA proposes to amend §25.1431, Electronic equipment, concerning the design and installation of electronic equipment on transport category airplanes.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The current standards address the critical environmental conditions that must be considered in the design and installation of radio and electronic equipment. The requirements are meant to ensure that electrical power is available to essential equipment without interruption, and that the malfunction of one unit or system of units will not adversely affect the operation of the other unit(s).

What are the Current 14 CFR and JAR Standards?

- The current text of 14 CFR 25.1431 is:

(a) In showing compliance with Sec. 25.1309 (a) and (b) with respect to radio and electronic equipment and their installations, critical environmental conditions must be considered.

(b) Radio and electronic equipment must be supplied with power under the requirements of Sec. 25.1355(c).

(c) Radio and electronic equipment, controls, and wiring must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other radio or electronic unit, or system of units, required by this chapter.

- The current text of JAR–25.1431 is:

(a) In showing compliance with JAR 25.1309 (a) and (b) with respect to radio and electronic equipment and their installations, critical environmental conditions must be considered.

(b) Radio and electronic equipment must be supplied with power under the requirements of JAR 25.1355 (c).

(c) Radio and electronic equipment, controls and wiring must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other radio or electronic unit, or system of units, required by this JAR–25.

(d) Electronic equipment must be designed and installed such that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes.

What Are the Differences in the Standards?

JAR–25.1431 contains paragraph (d) that requires verification that any electronic equipment will not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes.

Part 25 does not contain this specific requirement in § 25.1431. However, those requirements are already implicit in other current sections of part 25, specifically:

- *Section 25.1309(e) (Equipment, systems, and installations),* which states that each installation whose functioning is required and that requires a power supply is considered an ''essential load'' on the power supply. It requires that the power sources and the system must be able to continue to supply power loads under probable critical operating combinations and for probable durations;
- *Section 25.1351(b) (Electrical systems and equipment—General),* which requires, among other things, that electrical generating systems must be designed so that no failure or malfunction of any power source can create a hazard or impair the ability of remaining sources to supply essential loads; and
- *Section 25.1353(a) (Electrical equipment and installations),* which requires that electrical equipment, controls, and wiring must be installed so that operation of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to the safe operation.

What, If Any, Are the Differences in the Means of Compliance?

Manufacturers in the U.S. who apply for type certification of their products by the JAA must ensure that there are provisions in the type design to address the requirements contained in JAR–25.1431(d). By complying with the other sections of part 25 listed above, those manufacturers are, in effect, also complying with the requirements of JAR–25.1431(d).

What Is the Proposed Action?

The FAA proposes to revise § 25.1431 to add a new paragraph (d) that would be parallel to JAR–25.1431(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard continues to address the underlying safety issue by requiring that electrical power be available for electrical equipment on transport category airplanes. As stated previously, the requirements of the proposed standard are already included in other sections of part 25.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The addition of proposed § 25.1431(d) would have little effect on the current regulations. As stated above, its requirements are essentially already in effect because they are currently implicit in other sections of part 25. However, the FAA considers that the addition of the new paragraph would be beneficial in three ways:

1. The proposed standard would provide one location in the regulations that explicitly addresses requirements related to electrical power supply transients by stating that any electronic equipment installed on the aircraft shall not cause essential loads to become inoperative due to electrical power supply transients or transients from other causes.
2. The proposed standard may serve to clarify the objective of the other related regulations in part 25, described above.
3. With the addition of the proposed new paragraph, part 25 would be harmonized with JAR–25.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed action is in line with current industry practices. Manufacturers of U.S. products are already meeting the proposed requirement by complying with other current standards in part 25.

What Other Options Have Been Considered and Why Were They Not Selected?

The only other option considered was to retain the current text of § 25.1431 and not adopt the JAR text. However, the FAA decided against this for two reasons:

First, adopting § 25.1431(d) would have no significant additional impact on the cost of type certification, since it is consistent with standard design practices currently used to meet other part 25 regulations relevant to electrical installations. In other words, the requirements of proposed § 25.1431(d) essentially are met already when an applicant properly demonstrates compliance with § 25.1309(e), § 25.1351(b), and § 25.1353(a). Adopting the proposal would neither reduce nor increase the requirements beyond those that exist in the currently published regulations.

Second, adopting the proposal would eliminate an identified Significant Regulatory Difference (SRD) between the wording of part 25 and JAR–25, without affecting currently accepted industry design practices. The benefits of eliminating an SRD such as this are that more consistent interpretations of the rules can be expected, and the relations between regulatory authorities may be improved.

Who Would Be Affected by the Proposed Change?

The proposed change could affect manufacturers and operators of transport category airplanes. However,

since the proposed change does not result in any practical changes in requirements or practice, there would not be any significant effect.

Is Existing FAA Advisory Material Adequate?

The FAA does not consider that additional advisory material is necessary.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation.)

In conducting these analyses, the FAA has determined that this proposed rulemaking has benefits, but no costs, and that it is not ''a significant regulatory action'' under section 3(f) of Executive Order 12866. This proposed rulemaking would not have a significant economic impact on a substantial number of small entities, reduces barriers to international trade, and imposes no unfunded mandates on State, local, or tribal governments, or the private sector.

Because there are no apparent costs associated with this proposal, it does not warrant the preparation of a full economic evaluation for placement in the docket. The basis of this statement and for the above determinations is summarized in this section of the preamble. The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Presently, airplane manufacturers must satisfy both part 25 of Title 14, Code of Federal Regulations (14 CFR) and the European joint aviation requirements (JAR) certification standards to market transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create to the maximum possible extent a single set of certification requirements accepted in both the United States and Europe. These efforts are referred to as harmonization.

This proposed rulemaking would add a new § 25.1431(d) to part 25, to incorporate the ''more stringent'' requirement of paragraph 25.1431(d) of the JAR. The FAA has concluded for the reasons previously discussed in the preamble that the adoption of these JAR requirements into part 25 is the most efficient way to harmonize these section(s) and in so doing, the existing level of safety will be preserved.

The FAA estimates that there are no costs associated with this proposal. A review of current manufacturers of transport category aircraft certificated under part 25 has revealed that all such future aircraft are expected to be certificated under part 25 of both 14 CFR and the JAR. Since future certificated transport category aircraft are expected to meet the existing section 25.1431(d) of the JAR requirement and this proposed rulemaking adopts the same JAR requirement, manufacturers would incur no additional cost resulting from this proposal. Furthermore, this proposed rulemaking is in line with current industry practices as stated in the Radio Technology Commission for Aeronautics (RTCA) DO–160D, Environmental Conditions and Test Procedures. The DO–160D sets forth the standard procedures and environmental test criteria for testing airborne equipment for the entire spectrum of aircraft from light general aviation aircraft and helicopters through the ''Jumbo Jets'' and SST categories of aircraft. Examples of tests covered include vibration, power input, radio frequency susceptibility, lightning and electrostatic discharge. This standard is an internationally recognized standard of testing. Thus, the FAA expects any additional cost imposed by this proposal to be minimal. In fact, manufacturers are expected to receive cost-savings by a reduction in the FAA/JAA certification requirements for new aircraft. The FAA, however, has not attempted to quantify the cost savings that may accrue due to this specific proposed rulemaking, beyond noting that while they may be minimal, they contribute to a large potential harmonization savings. The agency concludes that because there is consensus among potentially impacted airplane manufacturers that savings will result, further analysis is not required.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), of 1980 as amended, establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant economic impact on a substantial number of small entities for two reasons. First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule requires that new transport category aircraft manufacturers meet just the ''more stringent'' European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing part 25 of 14 CFR requirement. Secondly, all United States transport-aircraft category

manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. United States part 25 airplane manufacturers include: The Boeing Company, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Given that this proposed rule is only minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and determined that it supports the Administration's free trade policy because this proposed rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore the requirements of the act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in 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.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Electronic equipment, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

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

2. Amend section 25.1431 by adding a new paragraph (d) to read as follows:

§ 25.1431 Electronic equipment

* * * * *

(d) Electronic equipment must be designed and installed such that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes.

Issued in Renton, Washington, on May 3, 2001.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 01–12102 Filed 5–14–01; 8:45 am]

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Federal Register

Tuesday,
May 15, 2001

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Fire Protection of Electrical System Components on Transport Category Airplanes; Proposed Rule

Proposed Advisory Circular 25.869–1X, Electrical System Fire and Smoke Protection; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9637; Notice No. 01–06]

RIN 2120–AG92

Fire Protection of Electrical System Components on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning the protection of electrical system components. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before July 16, 2001.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2001–9637, at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–9637.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov.*

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Massoud Sadeghi, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2117; facsimile 425–227–1320, e-mail massoud.sadeghi@faa.gov.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http://www.faa.gov/avr/armhome.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is ''Harmonization'' and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These additional costs, however, often do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also

maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the words of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

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In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

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For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

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For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize

For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC did not choose to review the draft NPRM prior to its publication.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this NPRM, the FAA proposes to amend § 25.869, concerning fire protection of electrical systems on transport category airplanes. This project has been identified as a Category 1 project under the Fast Track program.

What Is the Underlying Safety Issue Addressed by the Current Standards?

Section 25.869(a) of 14 CFR, and the parallel European standard JAR–25.869(a), address the design standards for protecting the components of electrical systems from fire. The standards provide specific standards that must be met, depending on the location of the components and the type of power cables.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.869(a) (amendment 25–72, 55 FR 29784, July 20, 1990) is:

(a) Electrical system components:

(1) Components of the electrical system must meet the applicable fire and smoke protection requirements of §§ 25.831(c) and 25.863.

(2) Electrical cables, terminals, and equipment in designated fire zones, that are used during emergency procedures, must be at least fire resistant.

(3) Main power cables (including generator cables) in the fuselage must be designed to allow a reasonable degree of deformation and stretching without failure and must be—

(i) Isolated from flammable fluid lines; or

(ii) Shrouded by means of electrically insulated, flexible conduit, or equivalent, which is in addition to the normal cable insulation.

(4) Insulation on electrical wire and electrical cable installed in any area of the fuselage must be self-extinguishing when tested in accordance with the applicable portions of part I, appendix F of this part.

The current text of JAR–25.869(a) (Change 14, Orange Paper 96/1) is:

(a) Electrical system components:

(1) Components of the electrical system must meet the applicable fire and smoke protection requirements of JAR 25.831(c) and JAR 25.863. (See ACJ 25.869 (a)(1).)

(2) Electrical cables, terminals, and equipment in designated fire zones, that are used during emergency procedures, must be at least fire resistant.

(3) Main power cables (including generator cables) in the fuselage must be designed to allow a reasonable degree of deformation and stretching without failure and must be—

(i) Isolated from flammable fluid lines; or

(ii) Shrouded by means of electrically insulated, flexible conduit, or equivalent, which is in addition to the normal cable insulation.

(4) Insulation on electrical wire and electrical cable installed in any area of the aeroplane must be self-extinguishing when tested in accordance with the applicable portions of Part I, Appendix F.

What Are the Differences in the Standards and What Do Those Differences Result In?

The current text of § 25.869(a)(4) states that insulation on electrical wire and cables installed in any part of the *fuselage* must be self-extinguishing. The parallel JAR–25.869(a)(4) states that insulation on electrical wire and cables installed in any part of the *airplane* must be self-extinguishing. Thus, the JAR is considered the more stringent of the standards because it requires that the self-extinguishment standard be applied to electrical systems installed throughout the airplane (including engines), not just in the fuselage.

The technical need and accepted industry practice is that all wiring installed in the airframe and engines (i.e., not just the wiring in the fuselage), is self-extinguishing.

What, if Any, Are the Differences in the Means of Compliance?

To meet the JAR standards, and ensure that their airplanes are certificated to operate in Europe, U.S. manufacturers have designed the means for protecting electrical system components in accordance with the JAR requirements. Doing so, meets and surpasses the level of safety currently required by § 25.869(a) of 14 CFR.

As for the means of compliance, the JAA has issued specific advisory material related to a means of complying with 25.869(a)(1). This material is found in Advisory Circular Joint (ACJ) 25.869, ''Electrical System Fire and Smoke Protection (Interpretative Material and Acceptable Means of Compliance) [See JAR 25.869].'' The document provides the following guidance:

These requirements, and those of JAR 25.863 applicable to electrical equipment, may be satisfied by the following:

1. Electrical components in regions immediately behind firewalls and in engine pod attachment structures should be of such materials and at such a distance from the firewall that they will not suffer damage that could hazard the aeroplane if the surface of the firewall adjacent to the fire is heated to 1100 °C for 15 minutes.

2. Electrical equipment should be so constructed and/or installed that in the event of failure, no hazardous quantities of toxic or noxious (e.g. smoke) products will be distributed in the crew or passenger compartments.

3. Electrical equipment, which may come into contact with flammable vapours should be so designed and installed as to minimise the risk of the vapours exploding under both normal and fault conditions. This can be satisfied by meeting the Explosion Proofness Standards of draft ISO document TC20/SC5/N.43, dated 1974.

The FAA has no advisory material related to the current standards.

What Is the Proposed Action?

The FAA proposes to revise § 25.869(a) to adopt the more stringent language in the parallel JAR 25.869(a). This proposed requirement is in line with current industry practices and in concert with the FAA's objectives for the Fast Track Harmonization Program.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed action would continue to address the safety issue by ensuring the fire protection of electrical system components on transport category airplanes.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed design requirements of revised § 25.869(a) would be expanded to apply not only to electrical system components in the fuselage, but throughout the airplane (including its engines as well). In effect, the proposed standard would maintain the current level of safety because U.S. manufacturers are already complying with it.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The effect of the proposed standard on industry practices would be minimal. In current practice, U.S. manufacturers are required to comply with the more stringent JAR requirements if they plan to sell their airplanes overseas. Because the proposed standard is currently being followed, the same level of safety will be maintained.

What Other Options Have Been Considered and Why Were They Not Selected?

One option considered was for the JAA to adopt unilaterally the standards of 14 CFR part 25. However, because § 25.869(a) is ''less stringent'' than the JAR, this could potentially mean adopting a lower level of safety. Additionally, it would not meet the objectives of the Fast Track Harmonization Program to harmonize the requirements of part 25 and the parallel requirements of JAR–25, while maintaining at least the same level of safety as in the current regulations.

Who Would Be Affected by the Proposed Change?

The proposed revised standard would affect U.S. manufacturers of transport category airplanes and, possibly, manufacturers of electrical systems installed on those airplanes. However, the FAA anticipates that the impact to the affected entities would be minimal because, in most cases, manufacturers are already complying with the more stringent standards as a means of obtaining joint (FAA and JAA) certification of their airplanes.

Is Existing FAA Advisory Material Adequate?

There is no current FAA advisory material related to the proposed standard. However, the FAA has developed a proposed Advisory Circular

(AC) 25.869–1X, ''Electric System Fire and Smoke Protection.'' It contains guidance on this subject, and includes, with some modification, the material currently in the JAA's ACJ 25.869, referred to previously. The availability of the proposed AC is announced elsewhere in this **Federal Register**.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal has no substantial costs, and that it is not ''a significant regulatory action'' as defined in Executive Order 12866, nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows:

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as ''harmonization.''

In this NPRM, the FAA proposes to amend its regulations concerning airworthiness standards for transport category airplanes, as regards fire protection of airplane systems.

U.S. manufacturers of transport category airplanes already comply to a large extent with the requirements of JAR 25.869(a) because it is substantially identical to § 25.869(a). Of the two minor differences between the rules, one is that the JAA rule specifically applies to the *airplane,* while the FAA rule specifically applies to the *fuselage.* Because it is the ongoing common practice of U.S. manufacturers to use the same wiring that is specified in terms of materials and installation by both § 25.869(a) and JAR 25.869(a) throughout the entire airplane, and not only in the fuselage, the first difference would have no economic impact on U.S. manufacturers.

The second minor difference is that advisory material (ACJ 25.869), which is specifically referenced in JAR 25.869(a), has no FAA counterpart. This harmonization action would include the adoption, with modification, of this JAA advisory material into the body of FAA advisory material. In their report, the ARAC Working Group set forth the text of the proposed advisory material. Toward this evaluation, the group provided the information that this new advice would be so sufficiently in line with current industry practices that, in following it, U.S. manufacturers would encounter no practical change in the procedures by which they already comply with the requirements of § 25.869(a).

Finally, because this proposed new material is advisory and not regulatory, no cost or benefit resulting from it could be considered the economic impact of a proposed regulation.

The FAA expects that this proposed rule would result in benefits in the form of cost savings received by affected manufacturers because they would be able to effect compliance with both FAA and JAA requirements in a simpler and more direct fashion.

Compliance with one of these harmonized rules, FAA or JAA, would mean compliance with the other. The FAA has not attempted to quantify the benefits from cost savings that may accrue because of this proposed rule beyond noting that, while any such savings are expected to be minimal, they are part of a potentially large savings from the harmonization program. The FAA also expects that the existing level of safety will be maintained.

Because the effect of this proposed regulatory change would be to codify ongoing common manufacturing practice, no consequent substantive change—either in practice or in the cost of compliance—would result. Thus, the FAA expects that any additional cost associated with compliance with this proposal would be negligible.

The FAA concludes that, because there is agreement among potentially affected airplane manufacturers that the economic impact of this proposal would be at most minimal, further analysis is not required. The FAA requests that those who believe this action would result in a cost increase provide to the Docket their basis for such a belief.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category aircraft manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Initial International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the proposed rule and has determined that it supports the Administration's free trade policy because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. We have determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this NPRM would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We have determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in 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.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

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

2. Amend section 25.869 by revising paragraph (a)(4) to read as follows:

§ 25.869 Fire protection: systems.

(a) * * *

(4) Insulation on electrical wire and electrical cable installed in any area of the airplane must be self-extinguishing when tested in accordance with the applicable portions of part I, appendix F of this part.

* * * * *

Issued in Renton, Washington, on May 3, 2001.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12100 Filed 5–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.869–1X, Electrical System Fire and Smoke Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25.869–1X and request for comments.

SUMMARY: This notice announces and requests comment on a proposed advisory circular (AC). The AC provides methods acceptable to the Administrator for showing compliance with revised standards for fire protection of electrical system components, which the FAA is proposing in a separate notice elsewhere in this **Federal Register**. This notice is necessary to give all interested people an opportunity to present their views on the proposed AC.

DATES: Send your comments on or before July 16, 2001.

ADDRESSES: Send your comments on the proposed AC to: Federal Aviation Administration, Attn: Massoud Sadeghi, FAA, Transport Airplane Directorate, Aircraft Certification Service, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056. You may inspected all comments received at that address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jill DeMarco, Program Management Branch, ANM–114, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1313; fax (425) 227–1320; e-mail jill.demarco@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites anyone interested in the proposed AC to comment on it by sending written data, views, or arguments as they may desire. Identify the AC by title and send your comments in duplicate to the address mentioned previously. The Transport Airplane Directorate will consider all communications received by the closing date for comments before issuing the final AC.

Availability of Proposed AC

You can find and download the proposed AC from the Internet at http://www.faa.gov/avr/air/airhome.htm, at the link titled ''Advisory Circulars'' under the ''Available Information'' drop-down menu. You can get a paper copy of the proposed AC by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

In a separate notice published elsewhere in this **Federal Register**, the FAA is proposing to amend the airworthiness standards for transport category airplanes concerning the protection of electrical system components. The proposal would revise Title 14, Code of Federal Regulations (CFR), 25.869(a) to adopt what are considered the ''more stringent'' requirements that currently exist in the parallel European Joint Airworthiness Requirements (JAR) 25.869(a). We initiated the proposal under the ''Fast Track Harmonization Program'' (64 FR 66522, November 26, 1999). Adopting the proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

We have prepared proposed AC 25.869–1X, ''Electrical System Fire and Smoke Protection,'' to provide guidance on one means of showing compliance with the revised requirements of § 25.896(a). Final issuance of proposed AC 25.869–1X is contingent on the final adoption of the proposed changes to § 25.869(a).

Issued in Renton, Washington, on May 3, 2001.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12101 Filed 5–14–01; 8:45 am]

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Federal Register

Tuesday,
May 15, 2001

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartment; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM175; Special Conditions No. 25–01–01–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended special conditions.

SUMMARY: These amended special conditions are issued to The Boeing Company for Model 777–200 series airplanes, modified by Flight Structures, Inc. This airplane has a novel or unusual design feature associated with the installation of a crew rest compartment. Special Conditions No. 25–169–SC were issued on December 1, 2000, addressing this installation. On January 16, 2001, Flight Structures, Inc., applied for an amendment to these special conditions to allow the assistance of personnel in the main passenger cabin to assist in the evacuation of an incapacitated person from the overhead crew rest compartment to the main passenger cabin. The assistance by persons in the main passenger cabin would reduce the potential for injury to the incapacitated person(s) being lowered from the overhead crew rest area to the main passenger cabin. Since the applicable airworthiness regulations, including those contained in Special Conditions No. 25–169–SC, do not contain adequate or appropriate safety standards for this design feature, these special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Transport Standards Staff, ANM–115, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2194; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1999, Flight Structures Inc., 4407 172 Street NE, Arlington, Washington, 98223, applied for a supplemental type certificate to install an overhead crew rest compartment in Boeing Model 777–200 series airplanes. The Boeing Model 777–200 is a large twin-jet engine transport airplane with four pairs of Type A exits, a passenger capacity of 440, and a range of 5000 miles. The overhead crew rest compartment is a single compartment located at the door three vicinity above the main passenger compartment with eight private bunks and two seats. A stairwell entering from the door three aisle is the main entry. Two escape hatches are located on either side of the entryway door. It is to be certified for a maximum of ten occupants. Due to the novel or unusual features associated with the installation of a crew rest compartment, Special Conditions No. 25–169–SC were issued on December 1, 2000, to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate. Flight Structures, Inc., now proposes to amend Special Conditions No. 25–169–SC to allow for assistance by persons on the main passenger cabin in the evacuation of an incapacitated person from the overhead crew rest.

Novel or Unusual Design Features

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been evaluated that are installed within the main passenger compartment area of the Boeing Model 777–200 and Model 777–300 series airplanes; other crew rest compartments have been installed below the passenger cabin area, within the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 airplane. The interfaces of the modification are evaluated within the interior and assessed in accordance with the certification basis of the airplane. The provisions of compliance with part 25 address cabin systems and interiors as they relate to typical passenger compartments. Part 25 does not provide the requirements for crew rest compartments within the overhead area of the passenger compartment for the Boeing Model 777–200 series airplanes.

This is a compartment that has never been used for this purpose in any previous Boeing Model 777–200 series airplanes. Due to the novel or unusual features associated with the installation of this crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Discussion

The current Special Condition No. 3 states the following: ''There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the crew rest compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant) may provide assistance in the evacuation.'' The applicant contends that assistance from persons on the main passenger cabin would reduce the possibility of injury to the incapacitated person being lowered from the overhead crew rest area into the main passenger cabin. The persons assisting could be either crewmembers or passengers seated in the area of the evacuation route.

The FAA has considered the applicant's position and agrees. These amended special conditions allow persons in the main passenger cabin to assist a flight crewmember during the evacuation of the incapacitated person, possibly reducing injury. It was the intent of the original Special Condition No. 3 to limit the number of persons in the actual crew rest area to one person when assisting in the evacuation of an incapacitated person from the overhead crew rest area.

The revised safety standard is contained in amended Special Condition No. 3. Although Special Conditions Nos. 1, 2, and 4 though 17 are standards adopted in Special Conditions No. 25–169–SC, they are repeated in these amended special conditions in order to place the revised standard in proper perspective.

Type Certification Basis

Under the provisions of § 21.101, Flight Structures, Inc., must show that the Boeing Model 777–200 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25—1 through 25–82. The U.S. type certification basis for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR §§ 21.29 and 21.17 and the type certification application date. The type

certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion of Comments

No comments were received, and the amended special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–200 series airplanes. Should Flight Structures, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777–200 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) adopts the following amended Special Condition No. 3 as part of the type certification basis for Boeing Model 777–200 series airplanes, as modified by Flight Structures, Inc., with overhead crew rest compartments. (Existing Special Conditions (Nos. 1, 2, and 4–17 are repeated below for clarity.)

1. Occupancy of the overhead crew rest compartment is limited to a maximum of ten occupants. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the crew rest compartment.

(a) There must be appropriate placards, inside and outside to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment,

(3) That occupancy is permitted during taxi, take-off and landing, and

(4) That smoking is prohibited in the crew rest compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the crew rest compartment.

(c) There must be a means to prevent passengers from entering the compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes that could be used by each occupant of the crew rest compartment to rapidly evacuate to the main cabin. In addition—

(a) The routes must be located with sufficient separation within the compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of two evacuation routes may not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (i.e., main aisle, cross aisle, or galley complex) that would impede egress of the crew rest compartment. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures must be established and transmitted to the operators for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the crew rest compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the crew rest area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. Procedures for the evacuation of an incapacitated person from the crew rest compartment must be established.

4. The following signs and placards must be provided in the crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i).

(b) An appropriate placard defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the airplane's main power system, or of the normal crew rest compartment lighting system, for

emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between the crewmembers on the flight deck and the occupants of the crew rest compartment. There must also be two-way communications between the occupants of the crew rest compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the crew rest compartment of an emergency situation. Use of a public address or crew interphone system would be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation, for a period of at least ten minutes.

8. There must be a means, readily detectable by seated occupants of the crew rest compartment, that indicates when seat belts should be fastened. Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position. In the event there are no seats, at least one sign must be provided to cover anticipated turbulence.

9. The following equipment must be provided:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) One protective breathing equipment device approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for fire fighting; and

(c) One flashlight.

10. A smoke detection system (or systems) must be provided that monitors each area within the crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the crew rest compartment from entering any other compartment occupied by crewmembers or passengers. The means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers must dissipate within 5 minutes after closing the access to the crew rest compartment. Flight tests must be conducted to show compliance with this requirement.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the crew rest compartment. The system must provide:

(a) An aural and visual warning to the occupants of the crew rest compartment to don oxygen masks in the event of decompression; and

(b) A decompression warning that activates before the cabin pressure altitude exceeds 15,000 feet. The warning must sound continuously until a reset pushbutton in the crew rest compartment is depressed.

14. The following requirements apply to a crew rest compartment that is divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. Two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each crew rest section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Conditions No.'s 10, 11, and 12).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the crew rest compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) For sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to

the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit.

(f) For each smaller section within the main crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Two-way voice communication (Special Condition No. 6),

(4) Emergency alarm system (Special Condition No. 7),

(5) Seat belt fasten signal (Special Condition No. 8),

(6) Emergency fire fighting and protective equipment (Special Condition No. 9), and

(7) Smoke or fire detection system (Special Conditions No.'s 10, 11, and 12).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a), as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington on May 2, 2001.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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Part VIII

Securities and Exchange Commission

17 CFR Part 202 et al.

Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of National Securities Exchanges and Limited Purpose National Securities Associations; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 240 and 249

[Release No. 34–44279; File No. S7–10–01]

RIN 3235–AI20

Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of National Securities Exchanges and Limited Purpose National Securities Associations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing new Rule 6a–4 under the Securities Exchange Act of 1934 (''Exchange Act'') and new registration Form 1–N prescribing the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant to Section 6(g)(1) of the Exchange Act to trade security futures. The Commission also is proposing conforming amendments to Rules 6a–2 and 6a–3 under the Exchange Act and Rule 202.3 of the Commission's procedural rules. In addition, the Commission is proposing new Rule 19b–7, new Form 19b–7, and amendments to Rule 19b–4 and Form 19b–4 to accommodate proposed rule changes submitted by security futures product exchanges registered pursuant to Section 6(g) of the Exchange Act and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act. These proposed rules and forms and amendments to existing rules and forms are necessary to implement the Commodity Futures Modernization Act of 2000 (''CFMA'') and will establish the registration and rule filing procedures for those entities that are interested in registering with the Commission for the purpose of trading security futures.

DATES: Comments must be received by June 14, 2001.

ADDRESSES: All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–10–01; this file number should be included on the subject line if e-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov.*). Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Senior Special Counsel, at (202) 942–0075; Heather Traeger, Special Counsel, at (202) 942–0763; Kelly Riley, Special Counsel, at (202) 942–0752; Michael Gaw, Attorney, at (202) 942–0158; and Cyndi Nguyen, Attorney, at (202) 942–4163, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to Rules 6a–2, 6a–3, and 19b–4,[1] and Form 19b–4 of the Exchange Act [2] as well as Rule 202.3 of the Commission's procedural rules,[3] regarding the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges and to accommodate proposed rule changes submitted by security futures product exchanges and limited purpose national securities associations under Sections 6(g) and 15A(k) of the Exchange Act, respectively.[4] The Commission also is requesting public comment on proposed new Rules 6a–4 and 19b–7 [5] and new Forms 1–N and 19b–7 under the Exchange Act.

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I. Introduction

The Commodity Futures Modernization Act of 2000 (''CFMA'') authorizes the trading of futures on individual stocks and narrow-based stock indexes, including puts, calls, straddles, options, or privileges thereon (collectively, ''security futures

[1] 17 CFR 240.6a–2, 240.6a–3, and 240.19b–4.

[2] 17 CFR 249.819.

[3] 17 CFR 202.3.

[4] 15 U.S.C. 78f(g) adn 78o–3(k).

[5] Proposed 17 CFR 240.6a–4 and 17 CFR 240.19b–7.

products'').[6] The CFMA makes security futures ''securities'' under the Exchange Act,[7] the Securities Act of 1933,[8] the Investment Company Act of 1940,[9] and the Investment Advisers Act of 1940,[10] and contracts of sale for future delivery of a single security or a narrow based security index or options thereon under the Commodity Exchange Act (''CEA'').[11] Accordingly, the regulatory framework established by the CFMA for the markets and intermediaries trading security futures products provides the Commission and the Commodity Futures Trading Commission (''CFTC'') with joint jurisdiction.

Because security futures products are securities under the Exchange Act, any organization, association, or group of persons that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of security futures products must register with the Commission as a national securities exchange.[12] New subsection 6(g) of the Exchange Act [13] provides an expedited process for an exchange that lists or trades security futures products to become registered with the Commission as a national securities exchange (''Security Futures Product Exchange'') if that exchange (i) is a board of trade that has been designated as a contract market or is registered as a derivative transaction execution facility; and (ii) does not act as a market place for transactions in securities other than security futures products.[14]

In addition, the CFMA amended the Exchange Act to require Security Futures Product Exchanges and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act (''Limited Purpose National Securities Associations'') [15] to file with the Commission proposed rule changes relating only to specific types of rules, and to provide an expedited filing process for most of these rules.[16]

II. Discussion of Proposed Rulemaking

A. Notice Registration as an Exchange to Trade Security Futures Products, Amendments to Such Notice, and Other Supplemental Material

Section 6(g)(2)(A) of the Exchange Act provides that an exchange required to register with the Commission only because it lists or trades security futures products may register by filing a written notice with the Commission in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[17] Such rule may require that the filing contain the rules of the exchange and other information and documents concerning the exchange, comparable to the information and documents the Commission requires for national securities exchanges registered under Section 6(a) of the Exchange Act.[18] Consistent with this provision, the Commission is proposing new Form 1–N to be filed by exchanges to register with the Commission under Section 6(g) of the Exchange Act.[19] Proposed Form 1–N requests limited information from the exchange, including how it will operate, its rules and procedures, criteria for membership, information on subsidiaries or affiliates, and the security futures products it intends to trade. Proposed Form 1–N is not an application and the Commission would not ''approve'' an exchange before it begins to trade security futures products. Instead, proposed Form 1–N would be a notice to the Commission that the exchange would be trading security futures products and would provide information necessary for the Commission to exercise its regulatory responsibilities.

Pursuant to Section 6(g)(2)(B) of the Exchange Act, such ''notice registration'' will be effective contemporaneously with the submission of proposed Form 1–N, unless the registration would be subject to suspension or revocation by the CFTC.[20] A Security Futures Product Exchange would be required to file an amendment to proposed Form 1–N to correct any previously filed information that has been discovered to be incorrect, and to provide any new information or correct any information rendered inaccurate.

The Commission also is proposing new Rule 6a–4 [21] to set forth the information that must be submitted by an entity to register as a Security Futures Product Exchange and the ongoing filing requirements for Security Futures Product Exchanges, and to revise Exchange Act Rules 6a–2 and 6a–3 [22] to exclude Security Futures Product Exchanges from the requirements of those rules.

1. Filing of Notice of Registration

Proposed Rule 6a–4 would require an exchange registering pursuant to Section 6(g) of the Exchange Act [23] to file proposed Form 1–N with the Commission. Proposed Rule 6a–4 would provide that an exchange may register as a national securities exchange solely for purposes of trading security futures products by filing Form 1–N if the exchange is a board of trade [24] that: (i) Has been designated a contract market by the CFTC or is registered as a derivative transaction execution facility under Section 5a of the CEA,[25] and (ii) such designation or registration is not suspended by the CFTC; [26] and (iii) such exchange does not serve as a market place for transactions in securities other than security futures products or futures on exempted securities or groups or indexes of securities, or options thereon.

Proposed Form 1–N is similar to Form 1, the application used to register as a national securities exchange or to apply for an exemption from exchange registration based on limited volume pursuant to Section 6(a) of the Exchange Act.[27] Because, however, exchanges registering with the Commission pursuant to Section 6(g) of the Exchange Act [28] are also subject to the CFTC application and reporting requirements, the Commission is proposing to limit the information required to be filed on Form 1–N,[29] compared to the information currently required to be filed on the Form 1. Specifically, proposed Form 1–N consists of an execution page and nine exhibits, which relate generally to the organization of the exchange, its membership requirements, the manner in which

[6] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763.

[7] Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10).

[8] Section 2(a)(1) of the Securities Act of 1933, 15 U.S.C. 77b(a)(1).

[9] Section 2(a)(36) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(36).

[10] Section 202(a)(18) of the Investment Advisors Act of 1940, 15 U.S.C. 80b–2(a)(18).

[11] Section 1a(31) of the CEA, 7 U.S.C. 1a(31).

[12] *See* Section 5 of the Exchange Act, 15 U.S.C. 78e. *See also* Section 3(a)(1) of the Exchange Act for the definition of ''exchange.'' 15 U.S.C. 78c(a)(1).

[13] 15 U.S.C. 78f(g).

[14] Section 6(g)(1) of the Exchange Act, 15 U.S.C. 78f(g)(1).

[15] 15 U.S.C. 78o–o3(k). Pursuant to this section, a futures association registered under Section 17 of the CEA shall be registered as a national securities association for the limited purpose of regulating the activities of its members with respect to security futures products.

[16] Sections 6(g)(4)(B) and 15A(k)(3) of the Exchange Act, 15 U.S.C. 78f(g)(4)(B) and 15 U.S.C. 78o–3(k)(3).

[17] 15 U.S.C. 78f(g)(2)(A).

[18] 15 U.S.C. 78f(a).

[19] 15 U.S.C. 78f(g).

[20] 15 U.S.C. 78f(g)(2)(B). Pursuant to its authority under the CEA, the CFTC may suspend or revoke registration of boards of trade. 7 U.S.C. 7b.

[21] Proposed Exchanged Act Rule 6a–4.

[22] 17 CFR 240.6a–2 amd 240.6a–3.

[23] 15 U.S.C. 78f(g).

[24] The term ''broad of trade'' has the same meaning as that term is defined in the CEA. 7 U.S.C. 1a(2).

[25] 7 U.S.C. 7(a).

[26] Section 6(g)(1)(A) of the Exchange Act, 15 U.S.C. 78f(g)(1)(A).

[27] 15 U.S.C. 78f(a).

[28] 15 U.S.C. 78f(g).

[29] *See* Proposed Form 1–N.

business is conducted on the exchange, and the security futures products traded or proposed to be traded. In those instances where the exchange has filed information with the CFTC, copies of documents filed with the CFTC could be filed with the Commission, instead of preparing a new document solely for purposes of filing with the Commission.[30]

Proposed Exhibit A to the proposed Form 1–N would require submission of the constitution, articles of incorporation or association with all subsequent amendments, and by-laws or corresponding rules of the Security Futures Product Exchange. Proposed Exhibit B to the proposed Form 1–N would require filings of written rulings, settled practices [31] and interpretations of the governing board or other committee of the exchange with respect to the rules, by-laws, constitution, or trading practices that are not included in Exhibit A. To ease preparation burdens, the Commission is proposing that Exhibits A and B be current as of the latest practicable date within 1 month of the date the proposed Form 1–N is filed. Because, pursuant to the regulatory framework set forth in the CFMA, the Commission does not approve the registration of exchanges filing proposed Form 1–N, or grant exemptions from registration, the Commission will not be required to make specific determinations as to whether such exchanges' systems, rules, and policies are consistent with the Exchange Act. Moreover, proposed Form 1–N would be filed with the Commission as a supplement to the continued oversight of the exchange by the CFTC. Accordingly, the Commission preliminarily believes that it would be reasonable for documents provided by exchanges filing proposed Form 1–N to be up-to-date within 1 month of the date of filing.

Proposed Exhibit C to the proposed Form 1–N would require information similar to that proposed to be included in Exhibits A and B but for affiliates, subsidiaries, and any entity with whom the exchange has a contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions in security futures products.[32] The exhibit would require basic information regarding any subsidiary, affiliate, or other related entity involved in the trading of security futures products. The Commission preliminarily does not believe it is necessary for exchanges to file the contract or agreement itself as part of Exhibit C. Instead, the Commission is seeking to identify the general characteristics of the entities and their operational relationship with the Security Futures Product Exchange, such as networking, software, or other agreements associated with the execution, reporting, clearance, or settlement of transactions in security futures products.[33] For the same reasons discussed above, the Commission is proposing that Exhibit C be current as of the latest practicable date within 1 month of the date the proposed Form 1–N is filed.

Proposed Exhibit D would require a description of the manner of operation of the Security Futures Product Exchange's systems involving the trading of security futures products, including: The procedures governing entry and display of quotations; the procedures governing execution, reporting, clearance and settlement of transactions in connection with the system; proposed fees; the procedures for ensuring compliance; the hours of operation; the date of intended commencement of operations; and a copy of the users' manuals.[34]

Proposed Exhibit E would require that the Security Futures Product Exchange provide general information regarding officers, governors, or persons performing similar functions.[35] Proposed Exhibit F would require similar background information for persons with direct ownership and control for non-member owned Security Futures Product Exchanges.[36] Proposed Exhibit H would require similar background information for members, participants, subscribers or other users of the system.[37] To the extent not covered by an exchange's rules submitted in Exhibit A, proposed Exhibit G would require a description of the criteria for membership in the exchange, as well as a description of the conditions under which members may be subject to, and the procedures involved in, suspension or termination of a member. The information required in these exhibits would provide the Commission with the names and roles of the participants using the exchange's system, which the Commission preliminary believes is necessary for reviewing the operation and function of the system.

Finally, a Security Futures Product Exchange would be required in proposed Exhibit I to provide a schedule of the security futures products it lists or proposes to list.

The Commission solicits comment on the proposed notice requirements in proposed Form 1–N, including the proposed exhibits. Specifically, the Commission seeks comment on whether the proposed requirements would be unreasonably burdensome for Security Futures Product Exchanges. Are all of the exhibits necessary? Is there other information that should be required to be provided or that could replace the information proposed to be submitted in the rule? For example, with respect to the timeframe as to when information must be current, is one month appropriate? Commenters are invited to address the possibility that intervening events may make information that is one month old outdated.

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[30] *See* Proposed Form 1–N, instruction 9, and, for amendments, proposed Exchange Act Rule 6a–4(b)(6).

[31] For purposes of proposed Exhibit B to proposed Form 1–N, the Commission considers settled practices to be the policies of an exchange that are not otherwise covered in its written rulings.

[32] Specifically, proposed Exhibit C would require for all such entitles: name and address of organization; form of organization; name of state and statute citation under which organized; date of incorporation in present form; brief description of nature and extent of affiliation; brief description of business or functions; a copy of the constitution, articles of incorporation or association including all amendments, and existing by-laws or corresponding rules or instruments; the name and title of the present offices, governors, or persons performing similar functions; and an indication of whether such business or organization ceased to be associated with the Security Futures Product Exchange during the previous year and the reasons for such termination.

[33] Proposed Exchange Act Rule 61–4(b)(5)(i); *see also* note 44 and accompanying text.

[34] The Commission would expect a narrative description of how trading is done on the exchange. The Commission does not expect exchanges to submit technical specifications for their automated systems.

[35] For persons listed in proposed Exhibit E, the exchange would be required to provide the name, title, dates of commencement and termination of term of office or position, and type of business in which each is primarily engaged.

[36] Proposed Exhibit F would require a Security Futures Product Exchange that is a corporation to list each shareholder that directly owns 5% or more of a class of a voting security. If the exchange is a partnership, it would be required to list all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed 5% or more of, the partnership's capital. For these persons, the exchange would be required to list the full legal name, title or status, date title or status was acquired, approximate ownership interest, and whether the person has control (as defined in the instruction to proposed Form 1–N. The Commission is proposing that Exhibit F be current as of the latest practicable date within 1 month of the date the proposed Form 1–N is filed.

[37] For persons listed in proposed Exhibit H, the exchange would be required to provide the name, and if such user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity, a brief description of the type of activities primarily engaged in by the individual, and the individual's class of membership, participation, or other access. The Commission is proposing that Exhibit H be current as of the latest practicable date within 1 month of the date the proposed Form 1–N is filed.

2. Filing of Periodic Amendments

Once registered, proposed Rule 6a–4 would require a Security Futures Product Exchange to file with the Commission an amendment that contains written notice of actions that create new or render inaccurate information filed on the execution page or as part of proposed Exhibits C, E, F or H of its proposed Form 1–N.[38] Any amendment would be required to be filed within 10 days after such action is taken.[39] In addition, each exchange would be required to file as an amendment, on or before June 30, 2002 and by June 30 every year thereafter, proposed Exhibits F, H, and I, which would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.[40] Proposed Rule 6a–4 also would require an exchange to file, as an amendment to its Form 1–N, on or before June 30, 2004 and by June 30 every three years thereafter, complete Exhibits A, B, C, and E, which would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.[41] The proposed requirements for periodic amendments to the proposed Form 1–N parallel the existing requirements for periodic amendments to the Form 1. The Commission preliminarily believes that it would be inappropriate to require Security Futures Product Exchanges to provide additional information on a more frequent basis than is required currently of registered national securities exchanges.

As a mechanism to reduce the filing burdens on Security Futures Product Exchanges, the Commission is proposing to allow such exchanges to comply with certain filing requirements by maintaining the information on an Internet web page and providing the location of such web site to the Commission.[42] A Security Futures Product Exchange also would be permitted to refer to materials published by, or in cooperation with, the exchange that contain the required information or to make the information available upon request at its office, instead of filing that information in paper.[43]

The Commission is proposing to reduce the reporting burden further by providing that an exchange may be exempted from filing the required amendments for any affiliate or subsidiary listed in proposed Exhibit C of the exchange's notice registration that either is listed in Exhibit C of the form for registration or notice registration of one or more other national securities exchanges, or was an inactive subsidiary throughout the subsidiary's latest fiscal year.[44]

Finally, pursuant to Section 6(g)(2)(A) of the Exchange Act,[45] the Commission is proposing that if a Security Futures Product Exchange has filed documents with the CFTC, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.[46]

The Commission seeks comment on the proposed requirements relating to the filing of periodic amendments to the proposed Form 1–N. Specifically, commenters are invited to comment on the requirement that an amendment be filed within 10 days after any action is taken by the Security Futures Product Exchange that creates new information or renders inaccurate certain information filed as part of the Form 1–N. Should a different timeframe be established for the filing of periodic amendments? If so, should it be shorter or longer than the proposed 10 days? Should inaccuracies relating to information previously filed be material before additional disclosure is required?

Is it appropriate to require annual updates of the information required in Exhibits F, H, and I? Should additional exhibits be required to be updated on an annual basis, as well? Commenters should also address the propriety of the requirement that Exhibits A, B, C, and E be updated every three years. Is information up to three months old sufficiently current for purposes of the periodic reporting requirements? Should information be provided more often or less frequently?

Commenters are also invited to comment on the propriety of permitting a Security Futures Product Exchange to comply with certain filing requirements by providing to the Commission the location where such information is located on a web site, or making the information available upon request at its office.

3. Filing of Supplemental Material

Paragraph (c) of proposed Rule 6a–4 would require Security Futures Product Exchanges to furnish to the Commission copies of any materials related to the trading of security futures products (including notices, circulars, bulletins, lists, and publications) issued or made available to members of, or participants in, or subscribers to, the exchange.[47] The exchange would be required to file such information within 10 days after issuing or making such material available to members of, or participants in, or subscribers to, the exchange.[48] The Commission also is proposing that exchanges be permitted to make the information available on an Internet web site and provide the Commission with the location of the web site.[49]

Proposed paragraph (c) of proposed Rule 6a–4 also would require that an exchange file transaction reports within 15 days after the end of each calendar month containing, for each security futures product traded on such exchange, the number of contracts traded, and the type of security underlying such contracts. In addition, if the futures contract were for a single security, the exchange would be required to report the total number of shares underlying the contracts traded.[50] The proposed requirements for the filing of supplemental material parallel the existing requirements applicable to registered national securities exchanges that filed a Form 1 with the Commission. The Commission preliminarily believes that it would be inappropriate to require Security Futures Product Exchanges to provide this information on a more frequent basis that is required currently of registered national securities exchanges.

The Commission solicits comment on whether the type of information proposed to be required or the proposed frequency of filing should be modified in any way. For example, would it be more appropriate to change the monthly filing requirement for transaction reports to a quarterly filing requirement? The Commission also seeks comment on the proposed requirement that information relating to the trading of

[38] Proposed Exchange Act Rule 6a–4(b)(1).

[39] *Id.*

[40] Proposed Exchange Act Rule 6a–4(b)(2).

[41] Proposed Exchange Act Rule 6a–4(b)(3). In addition, proposed Rule 6a-4 would require a Security Futures Product Exchange promptly to file an amendment correcting any inaccuracy discovered on the filed proposed Form 1–N.

[42] Proposed Exchange Act Rule 6a–4(b)(4)(iii).

[43] Proposed Exchange Act Rule 6a–4(b)(4)(i) and (ii).

[44] Proposed Exchange Act Rule 6a–4(b)(5). The exemption would be granted only if at least one national securities exchange is required to file the amendment required by proposed Exchange Act Rule 6a–4(b) for an affiliate or subsidiary. While ''inactive subsidiary'' is not defined for purposes of this provision, the Commission expects to consider a subsidiary to be inactive only if it has little or no income and liabilities and, thus, does not have the potential to have an impact on the financial condition of the Security Futures Product Exchange. The Commission has established procedures for an entity to apply for an exemption from its rules. 17 CFR 240.0–12.

[45] 15 U.S.C. 78f(g)(2)(A).

[46] Proposed Exchange Act Rule 6a–4(b)(6).

[47] Proposed Exchange Act Rule 6a–4(c)(1)(i).

[48] *Id.*

[49] Proposed Exchange Act Rule 6a–4(c)(1)(ii).

[50] Proposed Exchange Act Rule 6a–4(c)(2).

security futures products be filed within 10 days after it is made available to members of, participants in, or subscribers to, the exchange. Comment is sought on the propriety of the proposed requirement that exchanges file certain transaction information within 15 days after the end of each calendar month. Specifically, is it appropriate for the Commission to request this type of information? Is 15 days after the end of each calendar month sufficient time to compile the requested information? Commenters are also invited to comment on the propriety of allowing exchanges to make the information available on an Internet web site.

4. Proposed Amendments to Exchange Act Rules 6a–2 and 6a–3

Rules 6a–2 and 6a–3 under the Exchange Act [51] set forth the ongoing filing requirements for registered or exempted exchanges that file applications with the Commission to become national securities exchanges pursuant to Rule 6a–1.[52] Because the Commission is proposing a new rule, Rule 6a–4, that incorporates the relevant provisions of Rules 6a–2 and 6a–3 that relate to ongoing filing obligations, the Commission is proposing to amend Rules 6a–2 and 6a–3 to exempt Security Futures Product Exchanges from the requirements of these rules.

5. Processing of Proposed Form 1–N for Notice Registration

The Commission proposes to amend paragraph (b) of Rule 202.3 of the Commission's procedural rules, ''Processing of Filings,'' to accommodate the proposed Form 1–N.[53] Specifically, the Commission proposes to add paragraph (b)(3), which would provide that notice forms for registration as a national securities exchange filed with the Commission pursuant to Section 6(g)(1) of the Exchange Act [54] are routed to the Division of Market Regulation, which would examine these applications to determine whether all necessary information has been supplied and whether all required documents have been furnished in proper form. Defective applications may be returned with a request for correction or held until corrected before being accepted as a filing.

B. Proposed Procedures for Filing Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations

If a self-regulatory organization (''SRO'') [55] decides to amend, add, or delete any provision of its rules (''proposed rule change''), it must submit to the Commission, pursuant to Section 19(b) of the Exchange Act,[56] the proposed rule change for notice, comment, and Commission approval, prior to implementation, unless it is otherwise permitted to become effective pursuant to that Section. The purpose of this requirement is to help ensure that, through Commission review and the public comment process, SROs carry out the purposes of the Exchange Act.[57]

The CFMA amended the Exchange Act to exempt Security Futures Product Exchanges [58] and Limited Purpose National Securities Associations [59] from the requirement to submit proposed rule changes to the Commission pursuant to Section 19(b) of the Exchange Act, except in enumerated circumstances. Specifically, Sections 6(g)(4)(B) [60] and 15A(k)(3) [61] of the Exchange Act require Security Futures Product Exchanges and Limited Purpose National Securities Associations to submit, pursuant to Section 19(b)(7) of the Exchange Act, proposed rule changes that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such SRO's obligation to enforce the securities laws.[62] In addition, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to submit, pursuant to Section 19(b)(1) of the Exchange Act,[63] proposed rule changes that relate to margin levels, except for those that result in higher margin levels, and proposed rule changes that have been abrogated by the Commission pursuant to Section 19(b)(7)(C) of the Exchange Act.[64]

1. Proposed Rule 19b–7 and Form 19b–7

Pursuant to Section 19(b) of the Exchange Act,[65] the Commission has the authority to adopt rules regarding the filing of proposed rule changes by the SROs. Section 19(b)(7) of the Exchange Act,[66] which addresses Security Future Product Exchanges' and Limited Purpose National Security Associations' rule filings, requires that a proposed rule change filed pursuant to this section contain a concise general statement of the basis and purpose of the proposed change. Upon such filing, the Commission is required to promptly publish notice of such proposed rule change and provide interested persons with the opportunity to submit comments. Pursuant to Section 19(b)(7) of the Exchange Act,[67] any proposed rule change filed with the Commission must be concurrently submitted to the CFTC and may take effect: (i) when a written certification has been filed with the CFTC under Section 5c(c) of the CEA;[68] (ii) when the CFTC determines that review of the proposed rule change is not necessary; or (iii) when the CFTC approves the proposed rule change.[69]

Because the Commission is required to publish each proposed rule change filed pursuant to Section 19(b)(7) of the Exchange Act,[70] the Commission must develop rules to ensure that each notice of filing complies not only with the requirements of that section, but also, with the requirements of the **Federal Register**. Thus, in its efforts to ensure that such proposed rule changes conform to these requirements, the

[51] 17 CFR 240.6a–2 and 240.6a–3.

[52] 17 CFR 240.6a–1.

[53] 17 CFR 202.3.

[54] 15 U.S.C. 78f(g)(1).

[55] Section 3(a)(26) of the Exchange Act defines a ''self-regulatory organization'' as any national securities exchange, registered securities association, registered clearing agency, and for the purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board (''MSRB''). 15 U.S.C. 78c(a)(26). Security Futures Product Exchanges and Limited Purpose National Securities Associations would fall within this definition.

[56] 15 U.S.C. 78s(b).

[57] The process of Commission review and public comment helps ensure, for example, that SROs refrain from using their regulatory powers in an unfair or anticompetitive manner to the detriment of investors.

[58] Section 6(g)(4)(B) of the Exchange Act, 15 U.S.C. 78f(g)(4)(B).

[59] Section 15A(k)(3) of the Exchange Act, 15 U.S.C. 78o–3(k)(3).

[60] 15 U.S.C. 78f(g)(4)(B).

[61] 15 U.S.C. 78o-3(k)(3).

[62] 15 U.S.C. 78s(b)(7). The Commission is also proposing a technical amendment to paragraph (a) of Rule 19b–4 and Part A of Form 19b–4 to exclude from the requirement that SROs file proposed rule changes on Form 19b–4 those proposed rule changes submitted pursuant to Section 19(b)(7)(a) of the Exchange Act. *See* proposed Exchange Act Rule 19b–4 and proposed Form 19b–4.

[63] 15 U.S.C. 78s(b)(1).

[64] 15 U.S.C. 78s(b)(7)(C).

[65] 15 U.S.C. 78s(b).

[66] 15 U.S.C. 78s(b)(7).

[67] Id.

[68] Section 5c(c) of the CEA, 7 U.S.C. 7a–2(c). Pursuant to Section 5c(c) of the CEA, a registered entity may elect to approve and implement any new rule or rule amendment by providing the CFTC a written certification that the new rule or rule amendment complies with the CEA.

[69] 15 U.S.C. 78s(b)(7)(B).

[70] 15 U.S.C. 78s(b)(7).

Commission is proposing Rule 19b–7 and Form 19b–7.

Proposed Rule 19b–7 would require proposed rule changes filed pursuant to Section 19(b)(7)(A) of the Exchange Act[71] to be made on Form 19b–7. Further, proposed Rule 19b–7 would state that a proposed rule change would not be deemed filed with the Commission unless a completed Form 19b–7 is submitted, and it is accompanied by a clear and accurate statement of the basis and purpose of the proposed rule change, including any impact on competition or efficiency, and a summary of any written comments received by the SRO pertaining to the proposed rule change. As required by the statute, the proposed rule would require the Commission to promptly publish such proposed rule changes.[72]

Finally, because the statute provides that the Commission will not approve proposed rule changes submitted pursuant to proposed Rule 19b–7,[73] the proposed rule states that the effectiveness of a proposed rule change does not create an inference of whether the proposed rule change is in the public interest, including whether it has an impact on competition. The Commission would not be taking final action on the proposal unless, as discussed below, it abrogates the proposed rule change pursuant to Section 19(b)(7)(C) of the Exchange Act,[74] and subsequently issues an order approving or disapproving the proposal pursuant to Section 19(b)(7)(D) of the Exchange Act.[75] Therefore, the Commission will not necessarily make a final determination on whether a proposed rule change filed pursuant to proposed Rule 19b–7 is in the public interest, including whether it has an impact on competition.

On proposed Form 19b–7, Security Futures Product Exchanges and Limited Purpose National Securities Associations would have to provide information sufficient to permit interested persons to submit meaningful comment on the proposal and to permit the Commission to consider whether the proposal should be abrogated because it unduly burdens competition or efficiency, conflicts with securities laws, or is inconsistent with the public interest or the protection of investors.[76] Proposed Form 19b–7 would require a Security Futures Product Exchange or Limited Purpose National Securities Association to submit: (1) A complete description of the terms of its proposal; (2) a description of the impact of the proposed rule change on various market participants; and (3) a description of how the filing relates to existing rules of the exchange or association. Proposed Form 19b–7 also would require a senior member of the management of the Security Futures Product Exchange or Limited Purpose National Securities Association to certify that the filing contains an accurate statement of authority and the statutory basis for the proposal and, among other things, that the proposal does not conflict with the federal securities laws.

Proposed Form 19b–7 is modeled after proposed Form 19b–6.[77] The Commission preliminarily believes that it is appropriate to use proposed Form 19b–6 as a model for proposed Form 19b–7 because it reflects the review and evaluation recently conducted by Commission staff regarding the Section 19(b) rule filing process, currently applicable to SROs. Accordingly, the Commission is proposing that proposed Form 19b–7 closely resemble the proposed Form 19b–6.

2. Proposed Rule Changes Related to Security Futures Products Required To Be Filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations Pursuant to Section 19(b)(1) of the Exchange Act

As discussed above, the Exchange Act exempts Security Futures Product Exchanges and Limited Purpose National Securities Associations from the filing requirements of Section 19(b) of the Exchange Act.[78] Instead, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to file only proposed rule changes relating to specifically enumerated matters, which are listed in Section 19(b)(7)(A) of the Exchange Act.[79] In addition, pursuant to Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act,[80] Security Futures Product Exchanges and Limited Purpose National Securities Associations, respectively, are required to file with the Commission, pursuant to Section 19(b)(1) of the Exchange Act[81] for notice, comment, and Commission approval or disapproval, pursuant to Section 19(b)(2) of the Exchange Act,[82] proposed rule changes that relate to margin, except for changes that result in higher margin levels.[83]

To implement the requirements of Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act,[84] the Commission is proposing to require Security Futures Product Exchanges and Limited Purpose National Securities Associations to file proposed rule changes related to margin (except for changes that result in higher margin levels) under Rule 19b–4[85] for approval under Section 19(b)(2) of the Exchange Act.[86] Rule 19b–4 is the rule under which all other SROs currently file proposed rule changes pursuant to Section 19(b)(1) of the Exchange Act.[87] This rule requires that filings with respect to proposed rule changes by an SRO be made on Form 19b–4.[88]

Section 19(b)(7)(C) of the Exchange Act[89] provides the Commission, after consultation with the CFTC, with the authority to summarily abrogate a proposed rule change filed pursuant to Section 19(b)(7) of the Exchange Act[90] if it appears to the Commission that such rule change unduly burdens

[71] 15 U.S.C. 78s(b)(7)(A).

[72] *Id.*

[73] Section 19(b)(7) of the Exchange Act, 15 U.S.C. 78s(b)(7).

[74] 15 U.S.C. 78s(b)(7)(C).

[75] 15 U.S.C. 78s(b)(7)(D).

[76] *See* Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C).

[77] The Commission recently published a proposal to replace Rule 19b–4 and Form 19b–4 with proposed Rule 19b–6 and proposed Form 19b–6. *See* Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 5, 2001).

[78] 15 U.S.C. 78s(b).

[79] 15 U.S.C. 78s(b)(7)(A).

[80] 15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78o–3(k)(3)(B).

[81] 15 U.S.C. 78s(b)(1). Section 19(b)(1) of the Exchange Act requires each SRO to file with the Commission its proposed rule changes accompanied by a concise general statement of the basis for, and purpose of the proposed rule change. Once an SRO files a proposed rule change, the Commission must publish notice of it and provide opportunity for public comment. The proposed rule change may not take effect unless the Commission approves it or it is otherwise permitted to become effective under Section 19(b)(3) of the Exchange Act.

[82] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Exchange Act sets forth the standards and time periods for the Commission either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved.

[83] As discussed above, pursuant to Sections 6(g)(4)(B)(i) and 15A(k)(3)(B) of the Exchange Act, proposed rule changes that relate to higher margin levels must be filed by Security Futures Product Exchanges and Limited Purpose National Associations with the Commission pursuant to Section 19(b)(7) of the Exchange Act.

[84] 15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78o–3(k)(3)(B).

[85] 17 CFR 240.19b–4.

[86] 15 U.S.C. 78s(b)(2).

[87] 15 U.S.C. 78s(b)(1).

[88] *See* note 77, *supra.* Security Futures Product Exchanges and Limited Purpose National Associations would be required to submit their proposed rule changes that relate to margin, except those that result in higher margin levels, to the Commission on Form 19b–4 or such other form that the Commission may designate as effective as of the time of the filing.

[89] 15 U.S.C. 78s(b)(7)(C).

[90] 15 U.S.C. 78s(b)(7). Pursuant to this section, Commission action to abrogate a rule change will not affect the validity or force of the rule change during the period it was in effect.

competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.[91] In the event that this occurs, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required, pursuant to Sections 6(g)(4)(B)(iii)[92] and 15A(k)(3)(C)[93] of the Exchange Act, respectively, to refile the proposed rule change pursuant to the requirements of Section 19(b)(1) of the Exchange Act.[94] The Commission is proposing that Security Futures Product Exchanges and Limited Purpose National Securities Associations use Form 19b–4 to file the abrogated proposed rule change. The Commission is proposing amendments to Form 19b–4 to accommodate proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act.[95]

Section 19(b)(7)(D) of the Exchange Act[96] sets forth standards for review and approval of proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act[97] and refiled pursuant to Section 19(b)(1) of the Exchange Act.[98] Specifically, the Commission must, within 35 days of the date of publication of notice of the filing of the proposed rule change, or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the SRO consents, either by order approve the proposed rule change or, after consultation with the CFTC, institute disapproval proceedings.[99] The Commission is proposing to amend Form 19b–4 to add language to this effect.[100]

Section 19(b)(7)(D)(ii) of the Exchange Act[101] states that the Commission must approve a proposed rule change that has been abrogated and refiled under Section 19(b)(1) of the Exchange Act[102] if the Commission finds that it does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission is proposing that Security Futures Product Exchanges and Limited Purpose National Securities Associations affirmatively set forth in Form 19b–4 that an abrogated proposed rule change that is being refiled satisfies these requirements.[103]

The Commission seeks comment on the proposed procedures for filing proposed rule changes pursuant to proposed Rule 19b–7 and Form 19b–7, and proposed amendments to Rule 19b–4 and Form 19b–4.

Commenters should specifically address the requirements of the proposed rules and associated forms, describing in detail any recommendations for modifying the proposed approach in such a way as to be consistent with the statutory requirements. For example, is the proposed certification requirement of the proposed Form 19b–7 appropriate? Is there a more appropriate procedure for the filing of proposed rule changes relating to margin (other than higher margin) and the refiling of proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act that would not require the use of Form 19b–4?

Finally, if the Commission were to adopt the proposed Rule 19b–6 and Form 19b–6, amendments similar to those proposed for Rule 19b–4 and Form 19b–4 would need to be made to accommodate proposed rule changes relating to margin, other than higher margin, and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act. The Commission seeks comment on how proposed Rule 19b–6 or Form 19b–6 would need to be modified to clarify the limited circumstances in which the proposed Rule 19b–6 and Form 19b–6 would be used by Security Futures Product Exchanges and Limited Purpose National Securities Associations.

III. Paperwork Reduction Act

Certain provisions of the proposed rules and forms contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[104] Accordingly, the Commission submitted the collection of information requirements contained in the rules and forms to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission is proposing to adopt two new collections of information titled ''Rule 6a–4 and Form 1–N'' and ''Rule 19b–7 and Form 19b–7.'' The Commission is also proposing to revise a collection of information titled ''Rule 19b–4 and Form 19b–4,'' OMB Control No. 3235–0045. 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.

A. Proposed Rule 6a–4 and Form 1–N

1. Summary of Collection of Information

Proposed Rule 6a–4 would set out procedures for certain futures markets that wish to trade security futures products to file notices with the Commission on new Form 1–N to become Security Futures Product Exchanges. Proposed Form 1–N calls for information regarding: how the exchange operates, its criteria for membership, its subsidiaries and affiliates, its rules and procedures, and the security futures products it intends to trade.

2. Proposed Use of Information

The information obtained under proposed Rule 6a–4 and proposed Form 1–N would provide the Commission and the public with basic information about exchanges that would trade security futures products but would not otherwise be required to register with the Commission. This information would assist the Commission to ascertain that such exchanges' activities do not unduly burden competition or efficiency, conflict with the securities laws, or are not inconsistent with the public interest and the protection of investors and, thus, assist the Commission's efforts to protect investors and the public interest.

3. Respondents

The Commission expects that 7 respondents could seek to become Security Futures Product Exchanges by filing notice on proposed Form 1–N.

[91] The Commission notes that it currently exercises similar authority pursuant to Section 19(b)(3)(C) of the Exchange Act, 15 U.S.C. 78s(b)(3)(C), with respect to proposed rule changes filed by the existing SROs that are immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act, 15 U.S.C. 78s(b)(3)(A).

[92] 15 U.S.C. 78f(g)(4)(B)(iii).

[93] 15 U.S.C. 78o–3(k)(3)(C).

[94] 15 U.S.C. 78s(b)(1).

[95] *See supra* note 77. If the Commission were to determine to adopt the proposed Rule 19b–6 and Form 19b–6, amendments similar to those proposed here for Rule 19b–4 and Form 19b–4 would be required to accommodate proposed rule changes related to margin (other than higher margin) and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act.

[96] 15 U.S.C. 78s(b)(7)(D).

[97] 15 U.S.C. 78s(b)(7)(C).

[98] 15 U.S.C. 78s(b)(1).

[99] The Commission notes that this is similar to the system currently in place for SRO filings, except for the CFTC's role and the approval standard to be applied by the Commission.

[100] *See* Part E of proposed Form 19b–4. *See also supra* note 77.

[101] 15 U.S.C. 78s(b)(7)(D)(ii).

[102] 15 U.S.C. 78s(b)(1).

[103] *See Information to be Included in the Completed Form,* Item 3 of proposed Form 19b–4.

[104] 5 U.S.C. 603(a).

4. Total Annual Reporting and Recordkeeping Burden

a. One-Time Costs

Proposed Rule 6a–4 would require each entity wishing to become a Security Futures Product Exchange to file proposed Form 1–N. The Commission estimates that each Form 1–N submission would take approximately 31 hours to file at a cost of approximately $3,000 (representing approximately 20 hours of legal work at $128/hour,[105] 11 hours of clerical work at $31/hour,[106] and $100 for miscellaneous clerical expenses). As the Commission believes that 7 entities would file to become Security Futures Product Exchanges, the Commission estimates that the total burden for filing initial Form 1–Ns for all respondents would be 217 hours (7 respondents × 31 hours/respondent), for a total cost of $21,000 (7 responses × $3,000/response).

b. Annual Costs

After an entity becomes a Security Futures Product Exchange by properly filing the initial Form 1–N, the exchange would be subject to ongoing responsibilities to file: (1) amendments to the Form 1–N in the event of material changes to the information provided in the initial Form 1–N; (2) periodic updates of certain information provided in the original Form 1–N; (3) certain supplemental information, such as information that is provided to the exchange's members; and (4) a monthly report summarizing the exchange's trading of security futures products.

The Commission estimates each Security Futures Product Exchange would have to file one amendment or periodic update per year, resulting in a burden of approximately 15 hours and $1,438 (representing approximately 9 hours of legal work at $128/hour, 6 hours of clerical work at $31/hour, and $100 of miscellaneous clerical expenses). The Commission estimates that the total annual burden for all respondents to provide the required amendments and updates would be 105 hours (15 hours/respondent per year × 7 respondents), for a total cost of $10,066 ($1,438/response × 7 responses/year).

The Commission estimates that each Security Futures Product Exchange would file supplemental information 13 times per year and would make 12 monthly reports. The Commission believes that, to meet these requirements, each respondent would be required only to copy and send documents likely to be prepared for their own internal uses. Accordingly, the Commission estimates that each of these 25 filings would impose a burden of approximately $21 (0.5 hours of clerical work at $31/hour and $5 for miscellaneous clerical expenses). The total annual burden for the collection of the supplemental information and monthly reports would be 87.5 hours (25 filings/respondent × 7 respondents × 0.5 hours/response), for a total cost of $3,675 (25 filings/respondent per year × 7 respondents × $21/response).

Therefore, the Commission concludes that the total annual burden for all Security Futures Product Exchanges (not including the one-time cost of filing the initial Form 1–N) would be 192.5 hours (105 + 87.5), for a total cost of $13,741 ($10,066 + $3,675).

5. Record Retention Period

As set forth in Rule 17a–1 under the Exchange Act,[107] a national securities exchange is required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, Security Futures Product Exchanges must retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[108]

6. Collection of Information Is Mandatory

This collection of information is mandatory.

7. Responses to Collection of Information Would Not Be Kept Confidential

The collection of information pursuant to proposed Rule 6a–4 and proposed Form 1–N would not be kept confidential.

B. Proposed Rule 19b–7 and Proposed Form 19b–7

1. Summary of Collection of Information

Proposed Rule 19b–7 would require a Security Futures Product Exchange or Limited Purpose National Securities Association that proposes to add to, change, or delete any of its existing rules relating to certain subjects[109] to submit such proposed rule change to the Commission on Form 19b–7. Proposed Form 19b–7 calls for a description of: the terms of the proposed rule change, the proposed rule change's impact on various market segments, and the relationship between the proposed rule change and the existing rules of the Security Futures Product Exchange or Limited Purpose National Securities Association. Proposed Form 19b–7 also calls for an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, the proposal's impact on competition, and a summary of any written comments on the proposed rule change received by the Security Futures Product Exchange or Limited Purpose National Securities Association.

2. Proposed Use of Information

The Commission would use the information obtained under proposed Rule 19b–7 to review proposed rule changes of Security Futures Product Exchanges and Limited Purpose National Securities Associations and to provide notice of these proposals to the public. The Commission would rely on the information provided in proposed Form 19b–7, as well as public comment regarding such proposals, in taking any action with respect to proposed rule changes. This information would assist the Commission to ascertain that the activities of Security Futures Product Exchanges and Limited Purpose National Securities Associations do not unduly burden competition or efficiency, conflict with the securities laws, or are not inconsistent with the public interest and the protection of investors and, thus, assist the Commission's efforts to protect investors and the public interest.

3. Respondents

As noted above, the Commission expects that 7 respondents could become Security Futures Product Exchanges by filing notice of registration on proposed Form 1–N. Upon doing so, these exchanges would become subject to the requirement to file proposed Form 19b–7 whenever they propose to add, delete, or amend certain rules relating to security futures products. In addition, the Commission anticipates that there would be one Limited Purpose National Securities Association (the National Futures Association) that also would be required to file certain rule changes relating to

[105] SIA Management and Professional Earnings, Table 107 (Attorney, New York), plus a 35 percent differential for bonus, overhead, and other expenses. The Commission believes that New York salaries are an appropriate basis for its estimates, as nearly all of the attorneys who would contribute to the filing of Form 1–Ns would be based in New York or cities with comparable legal markets. The same estimate for the cost of legal work has been used throughout this section.

[106] SIA Management and Professional Earnings, Table 012 (Secretary) plus a 35 percent differential for bonus, overhead, and other expenses. The same estimate for the cost of clerical work has been used throughout this section.

[107] 17 CFR 240.17a–1.

[108] *See* 15 U.S.C. 78q(b)(4)(B).

[109] *See* 15 U.S.C. 78f(g)(4)(B)(i) and 78o–3(k)(3)(A).

security futures products on proposed Form 19b–7. Therefore, the Commission estimates that there would be 8 respondents.

4. Total Annual Reporting and Recordkeeping Burden

The Commission estimates that respondents would average 15 proposed rule changes per year that would have to be filed on proposed Form 19b–7. The Commission notes that, although it receives approximately 20 to 100 proposed rule changes on Form 19b–4 per year from each of the existing SROs, these Form 19b–4 filings cover a wide range of subject areas, including trading, membership, dispute resolution, exchange governance, and fees. By contrast, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to file on proposed Form 19b–7 only certain types of proposed rule changes regarding security futures products. Given the limited types of rule changes that the proposed Form 19b–7 filings would cover, the Commission believes that 15 filings per respondent per year is a reasonable estimate.

The Commission estimates that an average Form 19b–7 would require approximately 16.5 hours to complete at a cost of approximately $1,824 (representing 12.5 hours of legal work at $128/hour, four hours of clerical work at $31/hour, and $100 for miscellaneous clerical expenses). These figures represent approximately one-half of the burdens that the Commission recently estimated would be required for submissions on proposed Form 19b–6.[110] Although proposed Forms 19b–6 and 19b–7 are quite similar, the Commission believes that one-half is an appropriate reduction in the estimated burden for proposed Form 19b–7, as proposed rule changes submitted on Form 19b–7 generally would become effective on filing and would not require any action by the Commission or any additional supporting information from the SRO. By contrast, many of the rule changes filed on proposed Form 19b–6 would require specific Commission approval and, thus, would require supporting information and perhaps even formal amendments from the SRO before they could be approved. Thus, the Commission expects that the burden of filing a proposed rule change on proposed Form 19b–7 generally would be substantially less than the burden of filing a proposed rule change on proposed Form 19b–6.

The Commission estimates that the total annual burden for all respondents to file proposed Form 19b–7 would be 1,980 hours (representing 15 filings/year per respondent × 8 respondents × 16.5 hours/filing), for a total cost of $218,880 ($1,824/filing × 15 filings/year per respondent × 8 respondents).

5. Record Retention Period

As set forth in Rule 17a–1 under the Exchange Act,[111] a national securities exchange or a national securities association is required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, Security Futures Product Exchanges and Limited Purpose National Securities Associations must retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[112]

6. Collection of Information Is Mandatory

The collection of information requirements imposed by proposed Rule 19b–7 under the Exchange Act and proposed Form 19b–7 would be mandatory.

7. Responses to Collection of Information Would Not Be Kept Confidential

The collection of information pursuant to proposed Rule 19b–7 and proposed Form 19b–7 would be made publicly available.

C. Proposed Amendments to Rule 19b–4 and Form 19b–4

1. Summary of Collection of Information

Section 19 of the Exchange Act[113] establishes a procedure by which SROs must file proposals to add, delete, or amend their rules. Rule 19b–4 implements this procedure and requires SROs to file proposed rule changes on Form 19b–4. Certain proposals submitted on Form 19b-4 must be approved by the Commission before they may take effect.

Although the primary means by which Security Futures Product Exchanges and Limited Purpose National Securities Associations would notify the Commission of proposed rule changes would be by filing a Form 19b–7, there are two circumstances in which such entities would be required to file a Form 19b–4: (1) a proposed rule change that relates to margin, except for a change that results in higher margin levels; or (2) a proposed rule change that has been abrogated by the Commission because it appears that the proposal unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. A proposed rule change that was filed on proposed Form 19b–7 but is abrogated by the Commission must be refiled on Form 19b–4.

2. Proposed Use of Information

The Commission uses the information obtained under Rule 19b-4 to review proposed rule changes by SROs and to provide notice of these proposals to the public. The Commission relies on the information provided in the Form 19b–4, as well as public comment regarding such proposals, in taking any action with respect to proposed rule changes. This information would assist the Commission to ascertain that the activities of Security Futures Product Exchanges and Limited Purpose National Securities Associations do not unduly burden competition or efficiency, conflict with the securities laws, or are not inconsistent with the public interest and the protection of investors and, thus, assist the Commission's efforts to protect investors and the public interest.

3. Respondents

Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to comply with Rule 19b–4 and use Form 19b–4 in the two circumstances described above. The Commission believes that 7 entities would likely seek to become Security Futures Product Exchanges, and that there would be one Limited Purpose National Securities Association, the National Futures Association. In addition, all other SROs are currently required to comply with Rule 19b–4 and use Form 19b–4.

4. Total Annual Reporting and Recordkeeping Burden

The Commission estimates that the proposed amendments to Rule 19b–4 would result in an additional 8 filings per year on Form 19b–4. The Commission estimates these new respondents would devote, on average, approximately 35 hours to the filing of each Form 19b–4, at a cost of $3,660 per filing (representing 25 hours of legal work at $128/hour, 10 hours of clerical work at $31/hour and $150 for miscellaneous clerical expenses). The Commission estimates that the total annual burden for all respondents resulting from the proposed amendments to the Form 19b–4 would be 280 hours (8 filings × 35 hours/

[110] *See supra* note 77.

[111] 17 CFR 240.17a–1.

[112] *See* 15 U.S.C. 78q(b)(4)(B).

[113] 15 U.S.C. 78s.

filing), for a total cost of $29,280 (8 filings × $3,660/filing).[114]

5. Record Retention Period

As set forth in Rule 17a–1 under the Exchange Act,[115] SROs are required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[116]

6. Collection of Information is Mandatory

The collection of information requirements imposed by existing Rule 19b–4 and Form 19b–4 under the Exchange Act are mandatory.

7. Responses to Collection of Information Would Not Be Kept Confidential

The collection of information required pursuant to proposed Rule 19b–7 and proposed Form 19b–7 would be made publicly available.

D. Proposed Amendments to Rules 6a–2 and 6a–3

These amendments are technical in nature and are intended only to clarify that Security Futures Product Exchanges are not subject to the collection of information requirements imposed by these rules. The amendments would neither add new respondents nor increase the burden on existing respondents.

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements proposed above should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–10–01. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–10–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

IV. Costs and Benefits of the Proposed Rulemaking

The Commission is proposing new Rule 6a–4 under the Exchange Act[117] and new registration Form 1–N prescribing the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant to Section 6(g)(1) of the Exchange Act[118] to list and trade futures on individual stocks and narrow-based stock indexes, including puts, calls, straddles, options, or privileges thereon. The Commission also is proposing conforming amendments to Rules 6a–2 and 6a–3 under the Exchange Act[119] and Rule 202.3 of the Commission's procedural rules.[120] In addition, the Commission is proposing new Rule 19b–7,[121] new Form 19b–7, and amendments to Rule 19b–4[122] and Form 19b–4 to accommodate certain proposed rule changes submitted by Security Futures Product Exchanges and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act.[123]

The proposed rules, forms, and conforming amendments are in response to the mandate of the CFMA,[124] which, among other things, requires the Commission to prescribe, by rule, the process for notice registration to be used by Security Futures Product Exchanges. Pursuant to the CFMA, the Commission has proposed Rule 6a–4 to prescribe information and documents to be submitted by Security Futures Product Exchanges that is comparable to the requirements applicable to national securities exchanges registered pursuant to Section 6(a) of the Exchange Act.[125] In addition, the CFMA directs the Commission to establish, by rule, the procedures for filing proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations that relate to certain matters, including higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such Security Futures Product Exchanges' and Limited Purpose National Securities' obligations to enforce the securities laws. The CFMA also amended the Exchange Act to require that proposed rule changes relating to margin, except for changes that result in higher margin levels, and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act[126] be filed under Section 19(b)(1) of the Exchange Act.[127]

The Commission is considering the costs and benefits of the proposed rules, forms, and conforming amendments and encourages commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs or benefits.

[114] However, these estimates do not include burdens associated with filings that propose wholesale additions or amendments to an SRO's rules. Such filings could result, for example, from the development of a new trading system. Past experience has demonstrated that about 1 percent of Form 19b–4 filings are of this sort. Because these filings typically represents so few of the total number of Form 19b–4 filings, and he scope of these filings may vary greatly from one filing to the next, the Commission has omitted them from the computation of the average cost associated with the respondent's reporting burden.

[115] 17 CFR 240.17a–1.

[116] *See* U.S.C. 78q(b)(4)(B).

[117] Proposed Exchange Act Rule 6a–4.

[118] 15 U.S.C. 78f(g)(1).

[119] 17 CFR 240.6a–2 and 240.6a—3.

[120] 17 CFR 202.3.

[121] Proposed Rule 19b–7.

[122] 17 CFR 240.19b–4.

[123] 15 U.S.C. 78o–3(k).

[124] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763

[125] 15 U.S.C. 78f(a).

[126] 15 U.S.C. 78s(b)(7)(C).

[127] 15 U.S.C. 78s(b)(1).

A. Costs and Benefits of Proposed Rule 6a–4, New Registration Form 1–N, and Conforming Amendments to Rules 6a–2 and 6a–3 under the Exchange Act and Rule 202.3 of the Commission's Procedural Rules

The Commission is proposing new Rule 6a–4 [128] to set forth the information that must be submitted by an entity to register as a national securities exchange and the ongoing filing requirements for Security Futures Product Exchanges, and to revise Exchange Act Rules 6a–2 and 6a–3 [129] to exclude Security Futures Product Exchanges from the requirements of those rules.

Proposed Rule 6a–4 would require an exchange registering pursuant to Section 6(g) of the Exchange Act [130] to file proposed Form 1–N [131] with the Commission. Once registered, proposed Rule 6a–4 would require a Security Futures Product Exchange to file with the Commission written notice of actions that create new information or render inaccurate information filed on the execution page or as part of proposed Exhibits C, E, F or H of its proposed Form 1–N within 10 days after such action is taken,[132] to file as an amendment, on or before June 30, 2002 and by June 30 every year thereafter, proposed Exhibits F, H, and I, which would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed,[133] and to file, as an amendment to its Form 1–N, on or before June 30, 2004 and by June 30 every three years thereafter, complete Exhibits A, B, C, and E, which would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.[134] The conforming amendments to Rules 6a–2 and 6a–3 exclude respondents from the requirements of these rules, and, therefore, the Commission preliminarily believes that there would be no costs imposed on, nor benefits accruing to, the respondents arising from the proposed conforming amendments. Finally, Rule 202.3 of the Commission's procedural rules provides that notice forms for registration as a national securities exchange filed with the Commission are routed to the Division of Market Regulation, and, therefore, the Commission preliminarily believes that there would be no costs imposed on, nor benefits accruing to, the respondents arising from the proposed conforming amendment.

1. Benefits

The proposed rules provide for an expedited filing process for a market to become registered with the Commission as a Security Futures Product Exchange since Form 1–N is not an application that requires an approval from the Commission. Because an exchange registering with the Commission pursuant to Section 6(g) of the Exchange Act [135] is also subject to the CFTC application and reporting requirements, the Form 1–N only requests limited basic information. Therefore, the Commission expects that the amount of time required to complete the Form 1–N to be one-third less than the amount of time currently required to complete the Form 1. Furthermore, pursuant to Section 6(g)(2)(A) of the Exchange Act,[136] in those instances where the exchange has filed information with the CFTC, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents could be filed with the Commission in lieu of completing those portions of the Form, therefore reducing an exchange's burden of compiling information.[137] Pursuant to Section 6(g)(2)(B) of the Exchange Act,[138] such notice registration will be effective contemporaneously with the submission of proposed Form 1–N, unless the registration would be subject to suspension or revocation by the CFTC. The information provided by exchanges filing proposed Form 1–Ns would be required to be up-to-date as of 1 month of the date of filing, which should provide the exchanges with additional flexibility in the preparation of the required documents.

As a mechanism to further reduce the filing burdens on Security Futures Product Exchanges, the Commission is proposing to allow such exchanges to comply with the requirements for filing amendments and supplemental materials by maintaining the information on an Internet web page and providing the location of such web site to the Commission.[139] Instead of filing amendments in paper form, a Security Futures Product Exchange also would be permitted to refer to materials published by, or in cooperation with, the exchange that contains the required information or to make the information available upon request at its office.[140] Permitting respondents to use the Internet as a means of compliance should ease burdens by reducing expenses associated with clerical time, postage, and copying and increase the speed, accuracy, and availability of information beneficial to investors and financial markets.

Furthermore, the Commission is proposing to exempt a Security Futures Product Exchange from filing the required amendments for any affiliate or subsidiary listed in proposed Exhibit C of the exchange's notice registration that either is listed in Exhibit C to the form for registration or notice registration of one or more other national securities exchanges, or was an inactive subsidiary throughout the subsidiary's latest fiscal year.[141] Proposed amendments to Rules 6a–2 and 6a–3 [142] also would exempt Security Futures Product Exchanges from the ongoing filing requirements for registered or exempted exchanges, which file applications with the Commission pursuant to Rule 6a–1.[143] This would further reduce the filing burdens placed on the Security Futures Product Exchanges.

The Commission's proposal also should enhance the Commission's ability to oversee the exchanges trading security futures products, which is critical to the continued integrity of our markets. The Commission believes that its oversight, in conjunction with that of the CFTC, over trading activities in security futures products should benefit the public and the markets generally by helping to prevent fraud and manipulation.

2. Costs

The proposed rules, forms, and conforming amendments would require the respondents to comply with the initial notice and amendment requirements, which would require some effort to gather this information to file with the Commission. Most of this information, however, already exists and is currently provided to the CFTC, and the exchanges may provide copies of existing documents provided to the CFTC to the Commission in lieu of completing the Form to the extent that such documents contain information satisfying the Commission's informational requirements.[144] Therefore, the Commission

[128] Proposed Exchange Act Rule 6a–4.

[129] 17 CFR 240.6a–2 and 240.6a–3.

[130] 15 U.S.C. 78f(g).

[131] Proposed Form 1–N, 17 CFR 249.10.

[132] Proposed Exchange Act Rule 6a–4(b)(1).

[133] Proposed Exchange Act Rule 6a–4(b)(2).

[134] Proposed Exchange Act Rule 6a–4(b)(3).

[135] 15 U.S.C. 78f(g).

[136] 15 U.S.C. 78f(g)(2)(A).

[137] Proposed Exchange Act Rule 6a–4(b)(6).

[138] 15 U.S.C. 78f(g)(2)(B).

[139] Proposed Exchange Act Rule 6a–4(b)(4)(iii) and (c)(l)(ii).

[140] Proposed Exchange Act Rule 6a–4(b)(4)(i) and (ii).

[141] Proposed Exchange Act Rule 6a–4(b)(5).

[142] 17 CFR 240.6a–2 and 240.6a–3.

[143] 17 CFR 240.6a–1.

[144] Proposed Exchange Act Rule 6a–4(b)(6).

preliminarily believes that the costs incurred by the proposed rules and forms have been minimized.

As discussed above, the Commission estimates that the average paperwork cost per initial registration would be $3,000 for each respondent.[145]

The proposed amendments to Rules 6a–2 and 6a–3 [146] would exclude Security Futures Product Exchanges from the ongoing collection of information required by these rules. However, Rule 6a–4 would impose ongoing requirements on respondents. Proposed Rule 6a–4 would require respondents to provide periodic amendments to their initial registration. First, respondents would be required to file amendments due to material changes or new information filed on the execution page or as part of Exhibits C, E, F, or H of its proposed Form 1–N.[147] Second, respondents would be required to file amendments to, on or before June 30, 2002 and by June 30 every year thereafter, proposed Exhibits F, H, and I.[148] Third, proposed Rule 6a–4 also would require an exchange to file, as an amendment to its proposed Form 1–N, on or before June 30, 2004 and by June 30 every year thereafter, complete Exhibits A, B, C, and E.[149] As discussed above, the Commission estimates that the average paperwork cost for each amendment and periodic update would be $1,438.[150]

Much of the required information would not change frequently, and the option of posting information on an Internet web site should encourage more frequent updating of current information and reduce the cost of filing the amendments on paper.

Finally, paragraph (c) of proposed Rule 6a–4 would require Security Futures Product Exchanges to furnish to the Commission copies of all materials related to the trading of security futures products (including notices, circulars, bulletins, lists, and publications) issued or made available to members of, participants in or subscribers to, the exchange.[151] Exchanges would be permitted to make the information available on an Internet web site and provide the Commission with the location of the web site. Paragraph (c) of proposed Rule 6a–4 also would require Security Futures Product Exchanges to file transaction reports within fifteen days after the end of each calendar month containing, for each security futures product traded on such exchange, the number of contracts traded, and the type of security underlying such contract. In addition, if the futures contract were for a single security, the exchange would be required to report the total number of shares underlying the contracts traded.[152] As discussed above, the Commission estimates that each respondent would incur an average paperwork cost of $21 for each filing.[153]

B. Costs and Benefits of Proposed Rule 19b–7 and Form 19b–7 and Conforming Amendments to Rule 19b–4 and Form 19b–4

Proposed Rule 19b–7 would require the Commission to promptly publish Security Futures Product Exchanges' and Limited Purpose National Securities Associations' proposed rule changes that were filed pursuant to Section 19(b)(7) of the Exchange Act [154] on proposed Form 19b–7.

Pursuant to Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act,[155] the Commission is proposing to amend Rule 19b–4 to require Security Futures Product Exchanges and Limited Purpose National Securities Associations to file proposed rule changes related to margin (except for changes that result in higher margin levels) under Rule 19b–4 and to submit such margin changes on Form 19b–4. In addition, these amendments to Rule 19b–4 and Form 19b–4 should accommodate proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act [156] and refiled under Section 19(b)(1) of the Exchange Act.[157]

1. Benefits

Pursuant to the statutory mandate, the Commission would not be approving proposed rule changes submitted pursuant to proposed Rule 19b–7. Instead, a proposed rule change filed on proposed Form 19b–7 would become effective upon: (i) an exchange's filing of a written certification with the CFTC under Section 5c(c) of the CEA; [158] (ii) a determination by the CFTC that review of the proposed rule change is not necessary; or (iii) approval of the proposed rule change by the CFTC.

The new rule and form and amendments to existing rule and form are designed to provide information sufficient to permit interested persons to submit meaningful comment on the proposal and permit the Commission to consider whether the proposal should be abrogated because it unduly burdens competition or efficiency, conflicts with securities laws, or is inconsistent with the public interest or the protection of investors. These proposals should enable the Commission to carry out its statutorily-mandated oversight functions, including ensuring that SROs carry out their regulatory functions. This process protects the integrity of the markets, investors, and the public interest.

Proposed rule changes filed with the Commission would be required to be filed concurrently with the CFTC. However, although respondents must file with two agencies, there would, in effect, be only one effort in the collection and compilation of information.

2. Costs

The Commission believes that the costs associated with filing rule changes are predominately the paperwork costs. As discussed above, the Commission estimates that the average paperwork cost per proposed rule change submitted on Form 19b–7 would be $1,824.00.[159] The Commission estimates each respondent would file 15 proposed rule changes per year and incur an annual average burden of 247.5 hours for a total annual average cost of $27,360.00. In addition, the Commission estimates that the average paperwork cost per respondent to file proposed rule changes that relate to margin, except for changes that result in higher margin levels, or that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act [160] and refiled under Section 19(b)(1) of the Exchange Act,[161] would be $3,660.00.[162] In addition, the Commission estimates that the time associated with refiling an abrogated

[145] *See* Paperwork Reduction Act discussion at notes 105–108 and accompanying text.

[146] 17 CFR 240.6a–2 and 240.6a–3.

[147] Proposed Exchange Act Rule 6a–4(b)(1).

[148] Proposed Exchange Act Rule 6a–4(b)(2).

[149] Proposed Exchange Act Rule 6a–4(b)(3).

[150] *See* Paperwork Reduction Act discussion at notes 105–108 and accompanying text.

[151] Proposed Exchange Act Rule 6a–4(c)(1)(i).

[152] Proposed Exchange Act Rule 6a–4(c)(2).

[153] *See* Paperwork Reduction Act discussion.

[154] Specifically, Sections 6(g)(4)(B) and 15A(k)(3) of the Exchange Act, 15 U.S.C. 78f(g)(4)(B) and 15 U.S.C. 78o–3(k)(3)(B), require Security Futures Product Exchanges and Limited Purpose National Securities Associations to submit, pursuant to Section 19(b)(7) of the Exchange Act, 15 U.S.C. 78s(b)(7), proposed rule changes that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such SRO's obligation to enforce the securities laws.

[155] 15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78o–3(k)(3)(B).

[156] 15 U.S.C. 78s(b)(7)(C).

[157] 15 U.S.C. 78s(b)(1).

[158] 7 U.S.C. 7a–2(c)

[159] *See* Paperwork Reduction Act, Section III.B.

[160] 15 U.S.C. 78s(b)(7)(C).

[161] 15 U.S.C. 78s(b)(1).

[162] *See supra* note.

19b–7 filing would delay the filing process by 30 days.

C. Request for Comment

The Commission requests data to quantify the costs and the value of the benefits above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already defined, which may result from the adoption of these proposed rules, forms, and conforming amendments.

The Commission requests comment on the estimated number of respondents that would be filing proposed Forms 1–N and 19b–7 and the costs and benefits associated with complying with proposed Rules 6a–4 and 19b–7. The Commission specifically requests comments on the recordkeeping costs and data maintenance associated with the proposals and whether these costs would be significant.

The Commission requests comment on the costs and benefits associated with the Commission's proposed amendments to Rules 6a–2, 6a–3, and 19b–4.

The Commission also requests comment on the costs and benefits of filing Form 19b–4 for respondents' proposed rule changes related to margin, except for changes that result in higher margin levels, and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act [163] and refiled under Section 19(b)(1) of the Exchange Act,[164] including the accuracy of the Commission's estimates for the additional time necessary to refile an abrogated filing on Form 19b–4.

The Commission generally requests comment on the competitive or anticompetitive effects of the rules on any market participants if the proposals are adopted as proposed. The Commission also requests comment on what impact the proposals, if adopted, would have on efficiency and capital formation. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposal.

V. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [165] requires the Commission, whenever it is engaged in rulemaking, and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act [166] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) of the Exchange Act further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has considered the proposed rules in light of the standards set forth in Sections 3(f) [167] and 23(a)(2) [168] of the Exchange Act. As noted above, the CFMA amended the Exchange Act and the CEA to allow trading of security futures products and to provide for joint regulation of the markets for such products by the Commission and the CFTC. Accordingly, the Commission preliminarily does not believe that the information required by the proposed rules and associated forms will create a competitive imbalance between the securities markets and the futures markets. These filings of proposed rule changes are specifically contemplated by the Exchange Act, as amended by the CFMA, and are designed to enable the Commission to discharge its regulatory responsibilities under the Exchange Act. The Commission does not anticipate that the requirement that these filings of proposed rule changes be made on the proposed forms pursuant to the proposed rules would place any unreasonable burden on competition. The Commission solicits comments on the impact of the proposed rules on competition, including competition between Security Futures Product Exchanges and Limited Purpose National Securities Associations, on the one hand, and all other SROs, on the other.

Although there are certain legal and clerical costs involved in responding to the collections of information set forth in the proposed rules, the Commission preliminarily believes that these burdens are relatively small. Commenters are invited to submit comments on the effect of the proposed rules on efficiency and capital formation.

VI. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act [169] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[170] Proposed Rule 6a–4 and proposed Form 1–N would apply to Security Futures Product Exchanges that list and trade security futures products. Proposed Rule 19b–7 and proposed Form 19b–7 would be used by these national securities exchanges and Limited Purpose National Securities Associations that propose rule changes that relate to certain matters.[171] The Commission believes there could be seven Security Futures Product Exchanges and one Limited Purpose National Securities Association that would be subject to the proposed rules, none of which are small entities. The Acting Chairman has certified that the proposed rules, forms, and conforming amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

VII. Statutory Authority

The Commission is proposing the rules pursuant to its authority under Exchange Act Sections 3(b), 5, 6, 11, 11A, 17(a) and (b), 19, and 23(a).

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

[163] 15 U.S.C. 78s(b)(7)(C).

[164] 15 U.S.C. 78s(b)(1).

[165] 15 U.S.C. 78c(f).

[166] 15 U.S.C. 78w(a)(2).

[167] 15 U.S.C. 78c(f).

[168] 15 U.S.C. 78w(a)(2).

[169] 5 U.S.C. 603(a).

[170] 5 U.S.C. 605(b).

[171] These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who affect transactions in security futures products, or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. *See* 15 U.S.C. 78s(b)(7)(A).

17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Rules

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

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

2. The authority citation following § 202.3 is removed.

3. Section 202.3 is amended by adding paragraph (b)(3) to read as follows:

§ 202.3 Processing of filings.

* * * * *

(b)(1) * * *

(3) Notice forms for registration as national securities exchanges pursuant to section 6(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)) filed with the Commission are routed to the Division of Market Regulation, which examines these applications to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Defective applications may be returned with a request for correction or held until corrected before being accepted as a filing.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

5. The authority citations following §§ 240.6a–2 and 240.6a–3 are removed.

6. Section 240.6a–2 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 240.6a–2 Amendments to application.

* * * * *

(e) The Commission may exempt a national securities exchange, or an exchange exempted from such registration based on limited volume, from filing the amendment required by this section for any affiliate or subsidiary listed in Exhibit C of the exchange's application for registration, as amended, that either:

(1) Is listed in Exhibit C of the application for registration or notice of registration, as amended, of one or more other national securities exchanges; or

(2) Was an inactive subsidiary throughout the subsidiary's latest fiscal year. Any such exemption may be granted upon terms and conditions the Commission deems necessary or appropriate in the public interest or for the protection of investors, provided however, that at least one national securities exchange shall be required to file the amendments required by this section for an affiliate or subsidiary described in paragraph (e)(1) of this section.

(f) A national securities exchange registered pursuant to Section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall be exempt from the requirements of this section.

7. Section 240.6a–3 is amended by adding paragraph (c) to read as follows:

§ 240.6a–3 Supplemental material to be filed by exchanges.

* * * * *

(c) A national securities exchange registered pursuant to section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall be exempt from the requirements of this section.

8. Section 240.6a–4 is added to read as follow:

§ 240.6a–4 Notice of registration under section 6(g) of the Act, amendment to such notice, and supplemental materials to be filed by exchanges registered under Section 6(g) of the Act.

(a) *Notice of registration.* (1) An exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing Form 1–N (§ 249.10 of this chapter) (''notice of registration''), in accordance with the instructions contained therein, if:

(i) The exchange is a board of trade, as that term in defined in the Commodity Exchange Act (7 U.S.C. 1a(2)), that:

(A) Has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; or

(B) Is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act (7 U.S.C. 7a) and such registration is not suspended by the Commodity Futures Trading Commission; and

(ii) Such exchange does not serve as a market place for transactions in securities other than:

(A) Security futures products; or

(B) Futures on exempted securities or on groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2a).

(2) Promptly after the discovery that any information filed on Form 1–N (§ 249.10 of this chapter) was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(b) *Amendment to notice of registration.* (1) A national securities exchange registered pursuant to section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) (''Security Futures Product Exchange'') shall file an amendment to Form 1–N (§ 249.10 of this chapter), which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1–N (§ 249.10 of this chapter), within 10 days after any action is taken that renders inaccurate, or that causes to be incomplete, any of the following:

(i) Information filed on the Execution Page of Form 1–N (§ 249.10 of this chapter), or amendment thereto; or

(ii) Information filed as part of Exhibits C, E, F, or H to Form 1–N (§ 249.10 of this chapter), or any amendments thereto.

(2) On or before June 30, 2002 and by June 30 every year thereafter, a Security Futures Product Exchange shall file, as an amendment to Form 1–N (§ 249.10 of this chapter), Exhibits F, H, and I, which shall be up to date as of the latest date practicable within three months of the date the amendment is filed.

(3) On or before June 30, 2004, and by June 30 every three years thereafter, a Security Futures Product Exchange shall file, as an amendment to Form 1–N (§ 249.10 of this chapter), complete Exhibits A, B, C, and E. The information filed under this paragraph (b)(3) shall be current as of the latest practicable date, but shall, at a minimum, be up to date within three months as of the date the amendment is filed.

(4)(i) If a Security Futures Product Exchange, on an annual or more frequent basis, publishes, or cooperates in the publication of, any of the information required to be filed by paragraphs (b)(2) and (b)(3) of this

section, in lieu of filing such information, a Security Futures Product Exchange may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price of such publication; and

(B) Certify to the accuracy of such information as of its publication date.

(ii) If a Security Futures Product Exchange keeps the information required under paragraphs (b)(2) and (b)(3) of this section up to date and makes it available to the Commission and the public upon request, in lieu of filing such information, a Security Futures Product Exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

(iii) If the information required to be filed under paragraphs (b)(2) and (b)(3) of this section is available continuously on an Internet web site controlled by a Security Futures Product Exchange, in lieu of filing such information with the Commission, such Security Futures Product Exchange may:

(A) Indicate the location of the Internet web site where such information may be found; and

(B) Certify that the information available at such location is accurate as of its date.

(5) The Commission may exempt a Security Futures Product Exchange from filing the amendment required by this section for any affiliate or subsidiary listed in Exhibit C to Form 1–N (§ 249.10 of this chapter), as amended, that either:

(i) Is listed in Exhibit C to Form 1 (§ 249.1 of this chapter) or to Form 1–N (§ 249.10 of this chapter), as amended, of one or more other national securities exchanges; or

(ii) Was an inactive subsidiary throughout the subsidiary's latest fiscal year. Any such exemption may be granted upon terms and conditions the Commission deems necessary or appropriate in the public interest or for the protection of investors, provided however, that at least one national securities exchange shall be required to file the amendments required by this section for an affiliate or subsidiary described in paragraph (b)(5)(i) of this section.

(6) If such Security Futures Product Exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(c) *Supplemental material to be filed by Security Futures Product Exchanges.* (1)(i) A national securities exchange registered pursuant to section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall file with the Commission any material related to the trading of security futures products (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Such material shall be filed with the Commission within ten days after issuing or making such material available to members, participants or subscribers.

(ii) If the information required to be filed under paragraph (c)(1)(i) of this section is available continuously on an Internet web site controlled by an exchange, in lieu of filing such information with the Commission, such exchange may:

(A) Indicate the location of the Internet web site where such information may be found; and

(B) Certify that the information available at such location is accurate as of its date.

(2) Within fifteen days after the end of each calendar month, a national securities exchange registered pursuant to section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall file a report concerning the security futures products traded on such exchange during the calendar month. Such report shall set forth:

(i) The number of contracts of sale for future delivery of a single security and the number of shares and type of security underlying such contracts; and

(ii) The number of contracts of sale for future delivery of a narrow-based security index and the type of index underlying such contracts.

9. Section 240.19b–4 is amended by revising paragraph (a) to read as follows:

§ 240.19b–4 Filing with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to section 19(b)(7)(A) of the Act (15 U.S.C. 78s(b)(7)(A)), shall be made on Form 19b–4 (17 CFR 249.819).

* * * * *

10. Section 240.19b–7 is added to read as follows:

§ 240.19b–7 Filings with respect to proposed rule changes submitted pursuant to section 19(b)(7) of the Act.

(a) Filings with respect to proposed rule changes required to be submitted pursuant to section 19(b)(7)(A) of the Act (15 U.S.C. 78s(b)(7)(A)), shall be made on Form 19b–7 (17 CFR 249.822). The Commission will promptly publish a notice of filing of such proposed rule change.

(b) A proposed rule change will not be deemed filed on the date it is received by the Commission unless:

(1) A completed Form 19b–7 (17 CFR 249.822) is submitted; and

(2) In order to elicit meaningful comment, it is accompanied by:

(i) A clear and accurate statement of the basis and purpose of such rule change, including the impact on competition or efficiency, if any; and

(ii) A summary of any written comments (including e-mail) received by the self-regulatory organization on the proposed rule change.

(c) The effectiveness of a proposed rule change pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) does not create an inference of whether such proposed rule change is in the public interest, including whether it has an impact on competition.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

12. Section 249.10 and Form 1–N are added to read as follows:

Note: Form 1–N is attached as Appendix B to this document. Form 1–N will not appear in the Code of Federal Regulations.

§ 249.10 Form 1–N for notice registration as a national securities exchange.

This form shall be used for notice, and amendments to the notice, to permit an exchange to register as a national securities exchange solely for the purposes of trading security futures products pursuant to section 6(g) of the Act (15 U.S.C. 78f(g)).

13. Section 249.819 is revised to read as follows:

§ 249.819 Form 19b–4, for filings with respect to proposed rule changes by all self-regulatory organizations, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file proposed rule changes with the Commission pursuant to section 19(b)(1) of that Act (15 U.S.C. 78s(b)(1)) and Rule 19b–4 (17 CFR 240.19b–4) thereunder.

14. Form 19b–4 (referenced in § 249.819) is amended by:

a. In General Instruction A, ''Use of the Form,'' revise the first sentence;

b. In General Instruction C, ''Documents Comprising the Completed Form,'' revise the last sentence;

c. In General Instruction E, ''Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change,'' revise the last two sentences;

d. In General Instruction F, ''Signature and Filing of Completed Form,'' revise the first sentence;

e. In Information to Be Included in the Completed Form, item 3 ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,'' revise the second and third sentences of the introductory text and paragraph (b);

f. In Information to Be Included in the Completed Form revise item 6, ''Extension of Time Period for Commission Action;'

g. In Information to Be Included in the Completed Form, item 7, ''Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2),'' revise the title and paragraph (d); and

h. In Exhibit 1, Information to Be Included in the Completed Notice, add two undesignated paragraphs to the end of Item III, ''Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.''

The revisions and additions read as follows:

Note: Form 19b–4 and these amendments do not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

General Instructions

A. Use of the Form

This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the ''Act'') except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7)(A) of the Act.* * *

* * * * *

C. Documents Comprising the Completed Form

* * * Each filing shall be marked on the facing sheet with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year.

* * * * *

E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

* * * Nevertheless, proposed rule changes (other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act) may be initially filed before the completion of all such action if the self-regulatory organization consents, under Item 6 of this form, to an extension of the period of time specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until at least thirty-five days after the self-regulatory organization has filed an appropriate amendment setting forth the taking of all such action. If a proposed rule change to be filed for review under Section 19(b)(2) or Section 19(b)(7)(D) of the Act is in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues expected to be involved.

F. Signature and Filing of the Completed Form

Nine copies of Form 19b–4, nine copies of Exhibit 1, four copies of Exhibits 2 and 3, and two copies of Exhibit 4 shall be filed with, in the case of filings by securities exchanges, the Assistant Director for Derivatives and Exchange Oversight; in the case of filings by securities associations or the Municipal Securities Rulemaking Board, the Assistant Director for NMS and OTC; and in the case of filings by clearing agencies, the Assistant Director for Securities Processing, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001; in the case of filings by securities exchanges registered pursuant to Section 6(g)(1) of the Act and national securities associations registered pursuant to Section 15A(k) of the Act, the Assistant Director for Security Futures Products, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1003.* * *

* * * * *

Information To Be Included in the Completed Form

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

* * * With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act, except for proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(2) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(7)(D) of the Act that the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors.* * *

* * * * *

(b) With respect to proposed rule changes filed pursuant to both Sections 19(b)(1) and 19(b)(2) of the Act, explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. With respect to proposed rule changes filed pursuant Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, explain why the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest and the protection of investors, in accordance with Section 19(b)(7)(D) of the Act. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

* * * * *

6. Extension of Time for Commission Action

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

Note: The self-regulatory organization may elect to consent to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until it shall file an amendment which specifically states that the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act shall begin to run on the date of filing such amendment.

* * * * *

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

* * * * *

(d) If accelerated effectiveness pursuant to Section 19(b)(2) or Section 19(b)(7)(D) of the Act is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

* * * * *

Exhibit 1

* * * * *

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

* * * * *

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) After consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

* * * * *

15. Section 249.822 and Form 19b–7 are added to read as follows:

Note: Form 19b–7 is attached as Appendix C to this document. Form 19b–7 will not appear in the Code of Federal Regulations.

§ 249.822 Form 19b–7, for filings with respect to proposed rule changes by all self-regulatory organizations, pursuant to section 19(b)(7)(A) of the Securities Exchange Act of 1934.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file proposed rule changes with the Commission pursuant to section 19(b)(7)(A) of that Act (15 U.S.C. 78s(b)(7)(A)) and Rule 19b–4 (17 CFR 240.19b–4) thereunder.

By the Commission.

Dated: May 8, 2001.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Regulatory Flexibility Act Certification

I, Laura S. Unger, Acting Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. § 605(b) that proposed Rule 6a–4 and Form 1–N, conforming amendments to Rules 6a–2 and 6a–3 under the Securities Exchange Act of 1934 (''Exchange Act''), and Rule 202.3 of the Securities and Exchange Commission's procedural rules, which would provide for the notice registration of designated contract markets and derivative transaction execution facilities as national securities exchanges (''Security Futures Product Exchanges'') to list and trade futures on individual stocks and narrow-based stock indexes, would not have a significant economic impact on a substantial number of small entities. Proposed Rule 19b–7, Form 19b–7, and conforming amendments to Rule 19b–4 and Form 19b–4 under the Exchange Act, which propose procedures for the filing of proposed rule changes, likely would apply to seven Security Futures Product Exchanges and one limited purpose national securities association registered pursuant to Section 15A(k) of the Exchange Act, none of which is a small entity for the purpose of the Regulatory Flexibility Act. Accordingly, the proposed rules, forms, and conforming amendments, if adopted, would not have a significant impact on a substantial number of small entities.

Dated: May 8, 2001.

Laura S. Unger,

Acting Chairman.

BILLING CODE 8010–01–P

Appendix B

Note: Appendix B to the preamble will not appear in the Code of Federal Regulations.

Form 1-N

OMB APPROVAL
OMB Number: Expires: Estimated Average burden hours per form:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT

FORM 1-N INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form 1-N is the form for notice of registration as a national securities exchange for the sole purpose of trading security futures products ("Security Futures Product Exchange") pursuant to Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act").

2. **UPDATING** - A Security Futures Product Exchange must file amendments to Form 1-N in accordance with Exchange Act Rule 6a-4.

3. **CONTACT EMPLOYEE** - The individual listed on the Execution Page (Page 1) of Form 1-N as the contact employee must be authorized to receive all contact information, communications, and mailings and is responsible for disseminating such information within the Security Futures Product Exchange's organization.

4. **FORMAT**
   - Attach an Execution Page (Page 1) with original manual signatures.
   - Please type all information.
   - Use only the current version of Form 1-N or a reproduction.

5. If the information called for by any Exhibit is available in printed form, the printed material may be filed provided it does not exceed 8 1/2 X 11 inches in size.

6. If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

7. An exchange that is filing Form 1-N may not satisfy the requirements to provide certain information by means of an Internet web page. All materials must be filed with the Commission in paper.

8. **WHERE TO FILE AND NUMBER OF COPIES** - Submit one original and two copies of Form 1-N to: Securities and Exchange Commission, Division of Market Regulation, Office of Market Supervision, 450 Fifth Street, N.W., Washington, D.C. 20549-1005.

9. **PAPERWORK REDUCTION ACT DISCLOSURE**
   - Form 1-N requires an exchange registering as a national securities exchange, for the sole purpose of trading security futures, pursuant to Section 6(g) of the Exchange Act to provide the Securities and Exchange Commission ("SEC" or "Commission") with certain information regarding its operation. If documents containing information satisfying the Commission's information requirements have been filed with the Commodity Futures Trading Commission, copies of such documents may be filed with the Commission. Security Futures Product Exchanges are also required to update certain information filed on Form 1-N on a periodic basis.

   - 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. Sections 3(a)(1), 5, 6(a), and 23(a) of the Exchange Act authorize the Commission to collect information on this Form 1-N. *See* 15 U.S.C. §§78c(a)(1), 78e, 78f(a) and 78w(a).

   - Form 1-N is designed to enable the Commission to determine whether a Security Futures Product Exchange is in compliance with the Exchange Act.

   - It is estimated that an exchange will spend approximately 31 hours completing the initial application on Form 1-N pursuant to Rule 6a-4. It also is estimated that each Security Futures Product Exchange will spend approximately 15 hours to prepare each amendment to Form 1-N pursuant to Rule 6a-4.

   - Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

   - It is mandatory that an exchange seeking to operate as a national securities exchange for the sole purpose of trading security futures products file a Form 1-N with the Commission. It is also mandatory that Security Futures Product Exchanges file amendments to Form 1-N under Rule 6a-4.

   - No assurance of confidentiality is given by the Commission with respect to the responses made in Form 1-N. The public has access to the information contained in Form 1-N.

   - This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records are set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

Form 1-N Page 1 Execution Page	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, D.C. 20549** **FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT**	Date filed (MM/DD/YY):

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of a national securities exchange would violate the federal securities laws and may result in disciplinary, administrative or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

❁ APPLICATION ❁ AMENDMENT

1. State the name of the exchange: _____

2. Provide the Security Futures Product Exchange's primary street address (Do not use a P.O. Box):

_____

_____

3. Provide the exchange's mailing address (if different):

_____

_____

4. Provide the business telephone and facsimile number:

_____
(Telephone) (Facsimile)

5. Provide the name, title and telephone number of a contact employee:

_____
(Name) (Title) (Telephone Number)

6. Provide the name and address of counsel for the exchange:

_____

_____

7. Provide the date that the exchange's fiscal year ends: _____

8. Indicate legal status of the exchange: ☐ Corporation ☐ Sole Proprietorship ☐ Partnership

☐ Limited Liability Company ☐ Other (specify): _____

If other than a sole proprietor, indicate the date and place where the exchange obtained its legal status (e.g. state where incorporated, place where partnership agreement was filed or where the Security Futures Product Exchange entity was formed):
(a) Date (MM/DD/YY): _____ (b) State/Country of formation: _____

(c) Statute under which the exchange was organized: _____

EXECUTION:

The exchange consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the exchange's activities may be given by registered or certified mail or confirmed telegram to the exchange's contact employee at the main address, or mailing address if different, given in Items 2 and 3. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said exchange. The undersigned and the exchange represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete.

Date: _____ _____
(MM/DD/YY) (Name of Exchange)

By: _____ _____
(Signature) (Printed Name and Title)

Subscribed and sworn before me this _____ day of _____, _____ by _____
(Month) (Year) (Notary Public)

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form 1-N Page 2	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT	OFFICIAL USE	OFFICIAL USE ONLY

EXHIBITS

File all Exhibits with: a form for notice of registration as a national securities exchange for the sole purpose of trading security futures products pursuant to Section 6(g) of the Exchange Act and Rule 6a-4, or amendments to such forms pursuant to Rule 6a-4. For each exhibit, include the name of the filing exchange, the date upon which the exhibit was filed and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

Exhibit A As of the latest date practicable within one (1) month of the date Form 1-N is filed, a copy of the constitution, articles of incorporation or association with all subsequent amendments, and of existing by-laws or corresponding rules or instruments, whatever the name, of the filing exchange.

Exhibit B As of the latest date practicable within one (1) month of the date Form 1-N is filed, a copy of all written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any provisions of the constitution, by-laws, rules, or trading practices of the filing exchange which are not included in Exhibit A.

Exhibit C As of the latest date practicable within one (1) month of the date Form 1-N is filed, for each subsidiary or affiliate of the filing exchange that will be involved in the trading of security futures products, and for any entity with whom the exchange has a contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions in security futures products on the exchange ("System"), provide the following information:

1. Name and address of organization.
2. Form of organization (e.g., association, corporation, partnership, etc.).
3. Name of state and statute citation under which organized. Date of incorporation in present form.
4. Brief description of nature and extent of affiliation.
5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance (including the controls that will be implemented to ensure the safety of held funds or securities), or settlement of transactions in connection with operation of the System.
6. A copy of the constitution.
7. A copy of the articles of incorporation or association including all amendments.
8. A copy of existing by-laws or corresponding rules or instruments.
9. The name and title of the present officers, governors, or persons performing similar functions.
10. An indication of whether such business or organization ceased to be associated with the Security Futures Product Exchange during the previous year, and a brief statement of the reasons for termination of the association.

Exhibit D Describe the manner of operation of the System involving trading of security futures products. This description should include the following:

1. The means of access to the System.
2. Procedures governing entry and display of quotations and orders in the System.
3. Procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System.
4. Proposed fees.
5. Procedures for ensuring compliance with System usage guidelines.

Form 1-N Page 3	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT	OFFICIAL USE	OFFICIAL USE ONLY
	6. The hours of operation of the System, and the date on which the exchange intends to commence operation of the System. 7. Attach a copy of the users' manual.		
Exhibit E	A list of the officers, governors, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each: 1. Name. 2. Title. 3. Dates of commencement and termination of term of office or position. 4. Type of business in which each is primarily engaged.		
Exhibit F	This Exhibit is applicable only to filing exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange and should be current as of the latest date practicable within 1 month of the date Form 1-N is filed. If the exchange is a corporation, please provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Security Futures Product Exchange. If the exchange is a partnership, please provide a list of all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital. For each of the persons listed in the Exhibit F, please provide the following: 1. Full legal name. 2. Title or Status. 3. Date title or status was acquired. 4. Approximate ownership interest. 5. Whether the person has control, a term that is defined in the instructions to this Form.		
Exhibit G	To the extent not covered in an exchange's rules submitted under Exhibit A, describe the Security Futures Product Exchange's criteria for membership. Describe conditions under which members may be subject to suspension or termination with regard to access to the Security Futures Product Exchange. Describe any procedures that will be involved in the suspension or termination of a member.		
Exhibit H	As of the latest date practicable within 1 month of the date Form 1-N is filed, provide an alphabetical list of all members, participants, subscribers or other users, including the following information: 1. Name. 2. If member, participant, subscriber or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (e.g. partner, officer, director, employee, etc.). 3. Brief description of the type of activities primarily engaged in by the member, participant, subscriber, or other user. A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in activities or functions, identify each type and state the number of members, participants, subscribers, or other users in each. 4. The class of membership, participation, subscription or other access.		
Exhibit I	Provide a schedule of the security futures products proposed to be listed by the filing exchange, or for amendments to the Form 1-N the security futures products listed by the exchange, indicating for each the name of the issuer and a description of the security.		

Appendix C

Note: Appendix C to the preamble will not appear in the Code of Federal Regulations.

OMB Approval
OMB Number:
Expires:
Estimated average burden
hours

FORM 19b-7

File No. SR.....

Amendment No.....

(If Applicable)*

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 19b-7

Proposed Rule Change by

.....

(Exact Name of Self-Regulatory Organization)*

Pursuant to Rule 19b-7 under the Securities Exchange Act of 1934

*(Do not include parenthetical material in completed form)

BILLING CODE 8010–01–C

General Instructions

When Should This Form Be Used?

This form must be used for filings of proposed rule changes by all self-regulatory organizations (''SROs'') that are required to submit proposed rule changes pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''). National securities exchanges registered pursuant to Section 6(g), and national securities associations registered pursuant to Section 15A(k) of the Act, are SROs for purposes of this form.

Terms

Unless the context clearly indicates otherwise, terms used in this form have the meaning ascribed to them in the Act, as amended, and Rule 19b–7 thereunder.

Format Requirements

The Notice section of this Form 19b–7 must comply with the guidelines for publication in the **Federal Register** as well as any requirements for electronic filing as published by the Securities and Exchange Commission (''SEC'' or ''Commission'') (if applicable). The Office of the Federal Register (''OFR'') [http://www.nara.gov/fedreg] offers guidance on **Federal Register** publication requirements in the **Federal Register** *Document Drafting Handbook*, October 1998 Revision. For example, all references to the federal securities laws and the Commodity Exchange Act must include the corresponding cite to the United States Code in a footnote. All references to SEC and Commodity Futures Trading Commission (''CFTC'') rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases and CFTC decisions, orders or letters must include the release number, release date, **Federal Register** cite, **Federal Register** date, and corresponding file number (*e.g.*, SR–[SRO]–

xxxx–xx). Failure to provide this information will result in the proposed rule change being deemed not properly filed. In addition, the OFR's *Drafting Legal Documents* is a general style guide to clear and concise legal writing.

When Is a Proposed Rule Change Considered Filed?

To be considered filed, an SRO must include with its proposed rule change: a completed Form 19b–7 that includes the cover sheet, Notice, any written Certification submitted to the CFTC pursuant to Section 5c(c) of the Commodity Exchange Act (''CFTC Certification''), and applicable Exhibits. The proposed rule change will be considered filed on the date that the Commission receives it if the filing complies with all requirements of this form and the requirements of Rule 19b–7. Any filing that does not comply with all of the requirements of this form will not be considered filed with the Commission and will be returned to the SRO.

The SRO must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal. This information also is necessary for the Commission to determine whether abrogation of the proposal is appropriate because it unduly burdens competition or efficiency, conflicts with the securities laws or is inconsistent with the public interest and the protection of investors. It is the responsibility of the SRO to prepare Items I and II of the Notice.

What Other Information Must an SRO Include When Filing a Proposed Rule Change?

Exhibit 1

(a) Copies of all notices issued by the SRO soliciting comment on the proposed rule change.

(b) Copies of all written comments on the proposed rule change received by the SRO, even if the SRO did not solicit comments. All comments should be presented in alphabetical order, together with an alphabetical listing of the commenters.

(c) Any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a summary of comments on the proposed rule change made at any meeting.

(d) Any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change prepared or received by the SRO. All correspondence or other communications should be presented in alphabetical order together with an alphabetical listing of the authors.

(e) If after the proposed rule change is filed but before the Commission takes final action on it, the SRO prepares or receives any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change, copies of the communications must be filed as previously instructed in paragraph (b) above.

Exhibit 2

Copies of any form, report, or questionnaire that the SRO proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

What To Do if There Is an Amendment to the Proposed Rule Change?

If information on the Form 19b–7, the CFTC Certification, the Notice, or any applicable Exhibit is or becomes inaccurate or incomplete before the proposed rule change becomes effective, the SRO must file correcting amendments. Nine copies of amendments, including one manually signed copy, must be provided. SROs may file amendments electronically in accordance with Commission instructions.

If an amendment alters the text of the proposed rule change as it appeared prior to the amendment, the amendment must mark the text, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of this requirement is to permit the staff to immediately identify any changes made to the previous version of the rule text.

Where and How To File

Nine copies of Form 19b–7 and all applicable exhibits must be filed with the Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–1003. The chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must manually sign at least one copy of the completed Form 19b–7. The form also may be filed electronically with the Commission in compliance with such guidelines as may be published by the Commission from time to time. Please note that any information filed by the SRO requesting confidential treatment must be filed on paper with the Commission.

BILLING CODE 8010–01–P

FORM 19b-7 CERTIFICATION

The chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must review the Form 19b-7 (including the Notice and all required exhibits (See General Instructions)), complete the following certification, and sign the certification statement set forth below. The filing will not be considered filed with the Commission if the relevant items are not complete. This certification incorporates all statements made in the Notice.

Contact Information: Provide the name(s), telephone number(s) and e-mail address(es) of the person(s) on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change:

Name(s): _____

Telephone number(s): _____

E-mail address(es): _____

I, [name, title, self-regulatory organization] certify that (please check all applicable items below):

- ☐ The filing provides an accurate statement of the authority and statutory basis for the proposed rule change.
- ☐ The filing does not unduly burden competition or efficiency, conflict with securities laws, and is not inconsistent with the public interest and protection of investors.
- ☐ The Board of Directors or other governing authority of the self-regulatory organization required under its constitution, articles of incorporation, bylaws, rules, or corresponding instruments has approved the proposed rule change.

- ☐ The Notice provides a clear and accurate statement of the proposed rule change's impact on competition, including whether the proposed rule change would unduly burden competition.
- ☐ The proposed rule change is not inconsistent with the existing rules of the self-regulatory organization, and the Notice describes how the proposed rule change relates to these rules.
- ☐ If applicable, the Notice contains an accurate summary of all comments received (solicited or unsolicited).
- ☐ The Notice contains the text of the proposed rule change in the appropriate format required by the Commission.
- ☐ The Notice identifies prior Commission and CFTC orders or releases impacting the proposed rule change.

I understand that all statements made in the Notice are incorporated by reference into this Certification as representations of [name of self-regulatory organization] to the Commission. In addition, I have reviewed this Form 19b-7 Certification, the Notice, and any other applicable exhibits, and certify that they are accurate, complete, do not unduly burden competition or efficiency, conflict with the securities laws, are not inconsistent with the public interest and the protection of investors, and are consistent with other rules of [name of the self-regulatory organization].

.....

(Signature of chief executive officer, general counsel, other officer or director)[1]

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[1] Print name and title.

BILLING CODE 8010–01–C

Form 19b–7 Notice

Securities and Exchange Commission (Release No. 34–_____; File No. SR–_____)

Self-Regulatory Organization; [Notice of Filing and Immediate Effectiveness of a] Proposed Rule Change by [Name of Self-Regulatory Organization] Relating to [Brief Description of Proposed Rule Change]

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–7 under the Act,[3] notice is hereby given that on [date[4]], the [name of self-regulatory organization] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. [Self-regulatory organization] has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

Section 19(b)(7)(B) provides that a proposed rule change may take effect upon the occurrence of one of three events. The self-regulatory organization should include the following sentence, if applicable.

Pursuant to section 19(b)(7)(B) of the Act,[5] the [self-regulatory organization] filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act on [date].

I. Self-Regulatory Organization's Description of the Proposed Rule Change

(Supply a brief statement of the terms of substance of the proposed rule change. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate the changes in the rule by brackets for words to be deleted and underscoring for words to be added.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

[Self-regulatory organization] has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. These statements are set forth in Sections A, B, and C below. Section D below sets forth the text of the proposed rule change.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Provide a statement of the purpose of the proposed rule. The statement must:

- *Describe the text of the proposed rule change in a sufficiently detailed and specific manner as to permit interested persons to submit comments;*
- *Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various market participants, and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change;*
- *Describe how the proposed rule change relates to existing rules of the self-regulatory organization;*
- *Describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder;*
- *Identify rules of the self-regulatory organization and provisions of the federal securities laws that the self-regulatory organization reasonably expects the proposed rule change to affect and describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws and applicable rules of the self-regulatory organization; and*
- *Set forth the file numbers and the Commission Release number, the* **Federal Register** *citation, and other identifying information for prior filings relating to the affected rule and disclose any prior CFTC order or release impacting the proposed rule change.*

2. Statutory Basis

- Provide a statement of the proposed rule change's basis under the Act and the rules and regulations under the Act applicable to the self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

The information required by this section must be sufficiently detailed and specific to support the premise that the proposed rule change does not unduly burden competition. In responding to this section, the self-regulatory organization must:

- *State whether the proposed rule change will impose or relieve any burden on, or promote, competition;*
- *Specify the particular categories of persons and kinds of businesses that will be burdened and the ways in which the proposed rule change will affect them;*
- *Set forth and respond in detail to written comments addressing significant impacts or burdens on competition; and*
- *Explain why any burden on competition is not undue; or, if the self-regulatory organization does not believe that the burden on competition is significant, explain why.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

State whether or not comments were solicited or received. Summarize all comments received (solicited or unsolicited) and respond in detail to any significant issues raised about the proposed rule change.

If an issue is summarized and responded to in detail elsewhere in this notice, that response need not be duplicated if an appropriate cross-reference is made to the place where the response can be found.

D. Text of the Proposed Rule Change

Insert text of the proposed rule change, with deletions in brackets and additions underlined. If the self-regulatory organization is amending only part of the text of a lengthy rule, it may file only those portions of the text being amended if the filing is clearly understandable on its face.

[2] 15 U.S.C. 78s(b)(7).

[3] 17 CFR 240.19b–7.

[4] To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. *See* General Instructions.

[5] 15 U.S.C. 78s(b)(7)(B).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The self-regulatory organization shall include the following, if applicable:

The proposed rule change has become effective on [insert date of filing of written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act].

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) 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 conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. 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 these filings will also be available for inspection and copying at the principal office of the [name of self-regulatory organization]. Electronically submitted comments will be posted on the Commission's Internet website (http://www.sec.gov). All submissions should refer to File No. [insert file number] and should be submitted by [insert date 21 days from date of publication in the **Federal Register** [6].

This Notice was prepared by the [insert name of self-regulatory organization.] The Commission has not reviewed the substance of the proposed rule change prior to publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[Insert name of Secretary],

Secretary.

[FR Doc. 01–12131 Filed 5–14–01; 8:45 am]

BILLING CODE 8010–01–P

[6] To be completed by the **Federal Register**.

[7] 17 CFR 200.30–3(a)(12).

Federal Register

Tuesday,
May 15, 2001

Part IX

Environmental Protection Agency

40 CFR Part 70

Revision to Interim Approval Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6980–6]

Revision to Interim Approval Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends EPA's regulations governing the interim approval of State and local operating permits programs. This action removes the provisions that allow the Agency to extend expiration dates of interim approvals beyond 2 years from the date the interim approval is originally granted.

DATES: The regulatory amendments announced herein take effect on June 14, 2001.

ADDRESSES: Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A–93–50. This docket is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday. The address of the Air Docket is: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Docket is located in Room M–1500 of Waterside Mall (ground floor). The telephone number for the EPA Air Docket is (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger Powell, Mail Drop 12, United States Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone 919–541–5331, e-mail: powell.roger@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Background

If an operating permits program administered by a State or local permitting authority under title V of the Clean Air Act (Act) does not fully meet, but does ''substantially [meet],'' the requirements of part 70, EPA may grant that program ''interim approval'' (see section 70.4(d)(1)). Permits issued under an interim approval are fully effective and expire at the end of their fixed term, unless renewed under a part 70 program (see section 70.4(d)(2)). To obtain full approval, a permitting authority must submit to EPA program revisions correcting all deficiencies that caused the operating permits program to receive interim instead of full approval as identified by EPA in the notice granting interim approval. Such submittal must be made no later than 6 months prior to the expiration of the interim approval (see section 70.4(f)(2)). Originally, 99 State and local permitting programs were granted interim approval. For 15 of the original interim approved programs, permitting authorities have corrected the deficiencies identified in their interim approvals, and we have granted all of these programs full approval (see part 70, Appendix A).

On August 29, 1994 (59 FR 44460), and August 31, 1995 (60 FR 45530), we proposed revisions to our part 70 operating permits program regulations. Primarily, the proposals addressed changes to the system for revising permits, but a number of other proposed changes were also included. The preamble to the August 31, 1995, proposal noted the concern of many permitting authorities over having to revise their operating permits programs twice; once to correct interim approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, we proposed that States with interim approval '' * * * should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70'' (60 FR 45552).

II. Extension of Interim Approval Expiration Dates

On October 31, 1996 (61 FR 56368), we amended section 70.4(d)(2) to permit the Administrator to grant extensions to interim approval expiration dates to allow permitting authorities the opportunity to combine their program revisions correcting interim approval deficiencies with their program revisions that will conform to the part 70 revisions. In this rulemaking, we granted a 10-month extension to all interim approved programs for which the interim approval was granted prior to the date of issuance of a memorandum announcing our position on this issue (memorandum from Lydia N. Wegman to Regional Division Directors, ''Extension of Interim Approvals of Operating Permits Programs,'' June 13, 1996).

We then extended the interim approval expiration dates for State and local permitting programs three more times, the last time being May 22, 2000 (65 FR 32035).

The Sierra Club and New York Public Interest Research Group (NYPIRG) challenged our May 22, 2000, final action in the Court of Appeals for the District of Columbia Circuit [*Sierra Club et al.* v. *EPA* (D.C. Cir. No. 00–1262)]. As a result of that litigation, we entered into a settlement agreement with the litigants that holds that case in abeyance, pending implementation of the settlement agreement.

III. Regulatory Revision

One of the terms of the settlement agreement is that we will remove from § 70.4(d)(2) the language added on October 31, 1996, that allows granting extensions to interim approval expiration dates. On December 20, 2000, we proposed to remove that language and restore § 70.4 to the original language that was in that section when part 70 was promulgated. This rulemaking makes that proposed revision final. This revision to § 70.4 is consistent with our intent not to extend further interim approvals of operating permits programs. This action has no effect on the current expiration date of December 1, 2001, for programs that received an extension of their interim approvals in the May 22, 2000, action.

IV. Public Comments

Only one comment letter was received on the proposal to amend § 70.4. That commenter was the litigant with which we entered into the settlement agreement. The commenter supported this action.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–50. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that the parties can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket which is listed under the **ADDRESSES** section of this notice.

B. Executive Order (Executive Order) 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is ''significant,'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

This action is not a ''significant'' regulatory action pursuant to Executive Order 12866 because it does not substantially change the existing part 70 requirements for States or sources—requirements which have already undergone OMB review. As such, this action is exempted from OMB review.

C. Regulatory Flexibility Act Compliance

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that the regulations would not have a significant economic impact on a substantial number of small entities. Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the proposed part 70 revisions (a subset of which constitutes the action in this rulemaking). This action does not substantially alter the part 70 regulations as they pertain to small entities and accordingly will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in part 70 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0243. The Information Collection Request (ICR) prepared for part 70 is not affected by the action in this rulemaking notice because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. The action in this rulemaking notice does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, this action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action in this rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any one year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, this action does not amend the part 70 regulations in a way that significantly alters the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to accompany this regulatory action.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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).

G. Applicability of Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1977), applies to any rule that EPA determines (1) is ''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 final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the 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. The 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.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This rule change 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. Thus, the requirements of section 6 of the Order do not apply to this rule.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 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 final 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. This final rule is related only to interim approvals of State or local operating permits programs, not Tribal operating permits programs. Thus, Executive Order 13175 does not apply to this rule.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 70

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

Dated: May 9, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

1. The authority citation for part 70 continues to read as follows:

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

2. Section 70.4 is amended by revising paragraph (d)(2) to read as follows:

§ 70.4 State program submittals and transition.

* * * * *

(d) * * *

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a part 70 program.

* * * * *

[FR Doc. 01–12207 Filed 5–14–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
May 15, 2001

Part X

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2 and 37

Federal Acquisition Regulation; Correction to FAR Case 1999–403, Definitions; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 37

[FAC 97—22 Correction]

Federal Acquisition Regulation; Correction to FAR Case 1999—403, Definitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to the definition of ''Performance—based contracting.''

EFFECTIVE DATE: May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

In the document appearing in the **Federal Register** at 66 FR 2116, January 10, 2001:

1. On page 2124, in the bottom of the third column, revise the definition ''Performance—based contracting'' to read as follows:

2.101 [Corrected]

* * * * *

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth, in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

* * * * *

37.101 [Corrected]

2. On page 2133, in instruction number 93., remove the words '' 'Performance-based contracting' and''.

Dated: May 10, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–12214 Filed 5–14–01; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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GENERAL SERVICES ADMINISTRATION

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- Definitions
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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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H.R. 256/P.L. 107–8

To extend for 11 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 11, 2001; 115 Stat. 10)

Last List April 13, 2001

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