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

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–44–AD; Amendment 39–12592; AD 2002–01–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions, if necessary. The actions specified by this AD are intended to prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published in the **Federal Register** on May 31, 2001 (66 FR 29514). That action proposed to require initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions, if necessary.

Comments

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

One commenter has no objection to the proposed rule.

Clarify Repetitive Inspection Intervals

Two commenters ask for clarification of the repetitive inspection interval for Work Packages II and III, as specified in paragraph (a) of the proposed rule. One commenter states that it is unclear which interval the operator should use for the repetitive inspections: the interval in paragraph (a) or (b) of the proposed rule. The commenter adds that if the operator adheres to Work Package III using the more restrictive repetitive inspection intervals specified in paragraph (a), the requirement in paragraph (b) of the proposed rule is being met by the more frequent inspections; therefore, there is no need to track paragraph (b). The second commenter states that it interprets Note 2 of the proposed rule as referring to the requirements of the initial inspection only, and not to the repetitive inspection intervals specified in paragraphs (a) and (b) of the proposed rule. The commenter adds that its interpretation is that the repetitive inspections are still required at the intervals specified in paragraphs (a) and (b) of the proposed rule, but an inspection done per Work Package III can be used to take credit for the inspection specified in Work Package II.

The FAA concurs that clarification of the correct repetitive inspection interval for substitution of Work Package III for Work Package II, as specified in paragraph (a) of the final rule, is necessary. If the repetitive inspections in paragraph (a) are being done per Work Package III, it is not necessary to track paragraph (b), as noted by the first commenter. Note 2 of this final rule has been changed for clarification.

Clarify Reporting Requirement

One commenter asks that the FAA add a note to the proposed rule stating that the FAA is not requiring the reporting requirement that is specified in Boeing Service Bulletin 737–55A1070, Revision 1. The commenter adds that a section should be added to the proposed rule stating that operators should submit their findings to Boeing after each inspection.

The FAA agrees that some clarification is necessary. Although the referenced service bulletin specifies that a report of inspection results should be submitted to the airplane manufacturer (Boeing) after each inspection, and provides the information to be included in that report, we are not mandating the reporting requirement in this final rule. We have added this clarification to paragraphs (a) and (b) of the final rule.

Referenced Service Information

One commenter notes several issues with the service bulletin:

- Page 25 of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001, specifies concurrent accomplishment of certain service bulletins. The commenter would like clarification as to whether the referenced service bulletins are required to be accomplished concurrently with accomplishment of Boeing Service Bulletin 737–55A1070.
- Page 76 of the service bulletin has a typographical error in Item (g). That item specifies VMM 55–30–16, which should be CMM 55–30–16.
- Figures 3 and 4 of the service bulletin will be difficult to break into the three work packages, as these figures have combined all three packages into each figure, and have separated the Model 737–200 and –400 series airplanes. The commenter would like the figures broken out to have one figure

for each work package and airplane model.

The commenter has notified the airplane manufacturer of the above issues.

The FAA will inform the airplane manufacturer of the changes requested by the commenter, and we can clarify some of the issues noted by the commenter:

- The service bulletins referenced on page 25 of Boeing Service Bulletin 737–55A1070 are not required to be accomplished concurrently with the bulletin referenced in this final rule. The manufacturer merely recommends concurrent accomplishment because the actions are similar to those in this final rule.
- We agree that Item (g) on page 76 of the bulletin references an incorrect acronym (VMM); the bulletin should refer to the Component Maintenance Manual, so the correct acronym is CMM.
- Only the airplane manufacturer can make revisions or corrections to the figures illustrated in the service bulletin.

No changes to the final rule are necessary in this regard.

Change Paragraph (a)

One commenter asks that the initial detailed visual/free play inspections specified in paragraph (a) of the proposed rule limit the inspections for Work Package I to the ones for elevator tab free play, elevator tab hinge free play, and tab axial free play only. The commenter notes that the detailed visual inspections are not necessary. The commenter also asks that a check be included to ensure that self-locking castellated nuts with cotter pins are installed at each hinge location. The commenter states that the elevator tab and attachment hardware are inspected during the elevator tab hinge free play inspection, so another inspection is redundant. The commenter adds that the detailed visual inspection procedure for the elevator tab attachment hardware cannot be completed because, although the bolt can be wiggled or moved to check for unusual looseness, the spacers and bushings cannot be checked without removing the tab from the elevator. Additionally, the commenter notes that the attachment hardware of the elevator tab control push rod was already addressed in AD 2000–19–05, amendment 39–11906 (65 FR 65258, November 1, 2000), which requires replacement of all existing bolts and attachment nuts at the forward and aft end attachment of each elevator tab push rod with new bolts and self-locking castellated nuts.

The FAA does not agree with the commenter. Although a partial visual inspection may be done during the free play inspection, no minimum level of inspection is defined by the service bulletin. Figures 3 and 4 of Work Package I of the service bulletin describe procedures for doing the free play inspections, but do not describe procedures for a visual inspection. Contrary to the commenter's statement that a visual inspection cannot be completed unless the tab is removed, the spacers and bushings can indeed be visually inspected for unusual looseness without removing the tab, either by inspecting manually or using a probe. We also disagree that the free play inspections are a substitute for the detailed visual inspections. Additionally, AD 2000–19–05 requires a one-time visual inspection of the attachment nuts at the forward- and aft-end attachment of each elevator push rod only, and, therefore, is not a substitute for the repetitive inspections of the tab, hinges, and control mechanism required by this AD. No change to the final rule is necessary in this regard.

Add Paragraph or Note

One commenter asks that a paragraph or note be added to the proposed rule stating that installation of a new or overhauled elevator and tab assembly during a maintenance visit meets the intent of Work Packages II and III, and, therefore, paragraph (a) of the proposed rule does not need to be done during that maintenance visit.

The FAA does not agree. A complete definition of configuration and installation procedures that meet all the requirements of this AD for a new or overhauled elevator and tab assembly, is currently not available. However, once those procedures are defined, the FAA may approve requests for alternative methods of compliance under the provisions of paragraph (d) of the final rule, if data are submitted to substantiate that adequate installation procedures have been developed and an acceptable level of safety can be maintained.

Conclusion

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 previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,790 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,080 airplanes of U.S. registry will be affected by this AD, as follows:

Work package	Work hours @ $60/WH	Cost per airplane	Fleet cost
I	18	$1,080	$1,166,400
II	9	540	583,200
III	14	840	907,200

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

Regulatory Impact

The regulations 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.

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, 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:

2002–01–01 Boeing: Amendment 39–12592. Docket 2000–NM–44–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, line numbers 1 through 3132 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 (d) 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 excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane, accomplish the following:

Initial/Repetitive Inspections

(a) Do the applicable initial detailed visual/free play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package I of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001; at the times specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the free-play inspections after that at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever comes first, per either Work Package II or Work Package III of the service bulletin. Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Note 2: There is a one-way interchangeability between the free-play inspections specified in Work Packages II and III. The repetitive free-play inspections specified in Work Package II can be replaced by the repetitive free-play inspections specified in Work Package III at the repetitive inspection intervals specified in paragraph (a) of this AD. But the repetitive free-play inspections specified in Work Package III cannot be replaced by the repetitive free-play inspections specified in Work Package II.

(1) For airplanes having less than 4,500 total flight cycles: Before the accumulation of 4,500 total flight cycles or within 120 days after the effective date of this AD, whichever comes later.

(2) For airplanes having 4,500 or more total flight cycles: Do the inspections at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Within 120 days after the effective date of this AD.

(ii) If the initial inspections were done before the effective date of this AD per Boeing All Operator Telex M–7200–00–00034, dated February 15, 2000: Within 1,500 flight cycles or 2,000 flight hours after the effective date of this AD, whichever comes later.

Note 3: Initial inspections done before the effective date of this AD per Boeing Alert Service Bulletin 737–55A1070, dated January 13, 2000, are considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation or assembly to find damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 4,500 flight cycles or 6,000 flight hours, whichever comes first, after doing the initial inspections required by paragraph (a) of this AD: Do the free-play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package III of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001. Repeat the inspections after that at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever comes first. Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Corrective Actions

(c) If any damage or discrepancy is found after doing any inspection required by paragraph (a) or (b) of this AD, before further flight, do the applicable corrective action per the Accomplishment Instructions of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001.

Alternative Methods of Compliance

(d) 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 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–55A1070, Revision 1, including appendices A, B, and C, dated May 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 19, 2002.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–200 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 95P–0315]

Hematology and Pathology Devices; Reclassification of the Automated Differential Cell Counter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the automated differential cell counter (ADCC) from class III (premarket approval) into class II (special controls). FDA is also identifying the guidance document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA'' as the special control that the agency believes will reasonably ensure the safety and effectiveness of the device. This reclassification is being undertaken based on new information submitted in a reclassification petition from the International Society for Laboratory Hematology (ISLH), under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 and the FDA Modernization Act of 1997.

DATES: This rule is effective February 13, 2002.

ADDRESSES: Comments and the guidance may be seen at 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 guidance.

FOR FURTHER INFORMATION CONTACT: Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 9, 2001 (66 FR 23634), FDA published a proposed rule to reclassify the automated differential cell counter from class III (premarket approval) into class II (special controls) based on new information regarding this device and on the recommendation of the Hematology and Pathology Devices Panel. FDA also identified the document ''Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells'' as the special control capable of providing reasonable assurance of safety and effectiveness for this device. The agency has since revised the guidance to provide the option of submitting an abbreviated 510(k), thereby reducing the burden. At the same time, FDA is revising the title of the document to ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA.''

Interested persons were invited to comment on the proposed rule by August 7, 2001. FDA received one comment. That comment commended FDA's proposal to reclassify ADCCs into class II and agreed that the guidance proposed as the special control was adequate to provide reasonable assurance of the safety and effectiveness of the device.

II. FDA's Conclusion

Based on a review of the available information, referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA'' via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMICA Facts, at second voice prompt press 2, and then enter the document number (1184) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains a Web site at http://www.fda.gov/cdrh on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH Web site includes device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other medical device-oriented information. The CDRH Web site also includes the document ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA'' which may be accessed at http://www.fda.gov/cdrh/ode/guidance/1184.html. A search capability for all guidance documents may be found at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of ADCCs from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e).

Moreover, compliance with special controls proposed for this device will not impose significant new costs on affected manufacturers because most of

these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to ADCCs, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.5220 is revised to read as follows:

§ 864.5220 Automated differential cell counter.

(a) *Identification.* An automated differential cell counter is a device used to identify one or more of the formed elements of the blood. The device may also have the capability to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids. These devices may combine an electronic particle counting method, optical method, or a flow cytometric method utilizing monoclonal CD (cluster designation) markers. The device includes accessory CD markers.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA.''

Dated: January 3, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–792 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–001]

Drawbridge Operation Regulations; 63rd Street Bridge, Indian Creek, Mile 4.0, Miami Beach, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the 63rd Street Bridge across Indian Creek, mile 4.0, Miami Beach, Miami-Dade County, Florida. This deviation allows the drawbridge owner or operator to not open the Bridge from January 15, 2002 to January 19, 2002. This temporary deviation is required to allow the bridge owner to safely complete repairs to the Bridge.

DATES: This deviation is effective from 12:01 a.m. on January 15, 2002 until 11:59 p.m. on January 19, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The 63rd Street Bridge across Indian Creek, Miami Beach, Miami-Dade County, Florida is a double leaf bridge with a vertical clearance of 11.0 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 50 feet. On December 21, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR part 117 which requires the draw of the 63rd Street Bridge, mile 4.04 at Miami Beach, to open on signal. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR part 117 to complete repairs to the drawbridge. Under this deviation, the 63rd Street Bridge need not open either span from 12:01 a.m. on January 15, 2002 until 11:59 p.m. on January 19, 2002.

Dated: January 7, 2002.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–859 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD01–01–211

RIN 2115–AA97

Safety and Security Zone; Pilgrim Nuclear Power Plant, Plymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones around the Pilgrim Nuclear Power Plant in Cape Cod Bay, Plymouth, MA from November 15, 2001 until June 15, 2002. The safety and security zones will temporarily close all waters within an approximate 1000-yard distance from the plant, and will also close shore areas adjacent to the plant. The safety and security zones prohibit entry into or movement within a portion of Cape Cod Bay and adjacent shore

areas and are needed to ensure public safety and prevent sabotage or terrorist acts.

DATES: This rule is effective from November 15, 2001 until June 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553, the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated.

The Pilgrim Nuclear Power Plant is bordered on one side by water, exposing it to possible attack initiated from waters surrounding the power plant. Due to the potential catastrophic effect an exposure of radiation from the nuclear processes at the plant would have on the surrounding area, this rulemaking is urgently required to prevent potential future terrorist strikes against the Pilgrim Nuclear Power Plant. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render people and facilities within and adjacent to the Pilgrim Nuclear Power Plant property vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures implemented in this rule are intended to prevent possible terrorist attacks against the Pilgrim Nuclear Power Plant. They are needed to protect the facility, persons at the facility, the public and the surrounding community from potential sabotage or other subversive activity, and terrorist attacks, either from the water or by land through access to public trust lands between the low water and high water tide lines adjacent to the facility. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest. These zones should have minimal impact on the users of Cape Cod Bay as vessels are able to pass safely outside the zones. Public notifications will be made to the maritime community via notice to mariners and marine information broadcasts informing them of boundaries of the zones.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC, on September 11, 2001, safety and security zones are being established to safeguard the Pilgrim Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Pilgrim Nuclear Power Plant presents a possible target of terrorist attack, due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. These safety and security zones prohibit entry into or movement within the specified areas.

This rulemaking establishes security and safety zones having identical boundaries in all waters of Cape Cod Bay and land adjacent to those waters enclosed by a line as follows: beginning at position 41°57′30″ N, 070°34′36″ W; then running southeast to position 41°56′36″ N, 070°33′30″ W; then running southwest to position 41°56′28″ N, 070°34′38″ W; then running northwest to position 41°56′50″ N, 070°34′58″ W; then running northeast back to position 41°57′30″ N, 070°34′36″ W. This rulemaking also removes safety and security zones established on September 24, 2001 under temporary rulemaking 33 CFR 165.T01–171(a)(4) (66 FR 49280, Sept. 27, 2001). That rulemaking established safety and security zones with identical boundaries in the following area: All waters of Plymouth Bay within a five hundred (500) yard radius of the cooling water discharge canal at the Pilgrim Nuclear Power Plant, Plymouth, MA. Those safety and security zones did not extend to the full boundaries of the facility. This rulemaking is necessary to provide complete protection of the waterfront areas of the Pilgrim Nuclear Power Plant. The increase of the boundaries of the zones seaward is necessary to ensure enforcement authorities enforcing the zone ample area to adequately prevent any incursions of the zone allowing access to the plant. The safety and security zones established in this rulemaking extend the safety and security zones established in section 165.T01–171(a)(4) to an area roughly 1000-yards from the shoreline of the facility. That section, 165.T01–171 (a)(4), was also temporarily removed by temporary rulemaking 33 CFR 165.T01–201 effective November 5 to November 15, 2001. The safety and security zones also close shore areas immediately adjacent to the facility to prevent access to the facility from the shore area.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

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 policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zones in Cape Cod Bay, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Cape Cod Bay. For the reasons enumerated in the Regulatory Evaluation section above, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, at (617) 223–3000. Small businesses may send comments on the actions 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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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

The Coast Guard 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 pose 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. A rule with tribal implications has 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, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Remove temporary § 165.T01–171(a)(4).

3. From November 15, 2001 until June 15, 2002, add temporary § 165.T01–211 to read as follows:

§ 165.T01–211 Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, Massachusetts.

(a) *Location.* All waters and land enclosed by a line beginning at position 41°57′30″ N, 070°34′36″ W; then running southeast to position 41°56′36″ N, 070°33′30″ W; then running southwest to position 41°56′28″ N, 070°34′38″ W; then running northwest to position 41°56′50″ N, 070°34′58″ W; then running northeast back to position 41°57′30″ N, 070°34′36″ W.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

(3) No person may enter the waters or land area within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: November 15, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–860 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (E-mail) *matt.miller@fema.gov.*

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

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

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

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

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

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

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

The changes in BFEs are in accordance with 44 CFR 65.4. *National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana:					
Howard (FEMA Docket No. 7606.	Unincorporated Areas	July 20, 2001, July 27, 2001, *Kokomo Tribune*.	Mr. John Harbaugh, President, Howard County Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	June 27, 2001	180414
Hendricks (FEMA Docket No. 7604).	Town of Plainfield	June 7, 2001, June 14, 2001, *Hendricks County Flyer*.	Mr. Richard A. Carlucci, Town Manager, Town of Plainfield, 206 West Main Street, Plainfield, Indiana 46268–0065.	Sept. 14, 2001	180089

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Marion (FEMA Docket No. 7604).	City of Indianapolis	June 14, 2001, June 21, 2001, *Indianapolis Star*.	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, Indiana 46204.	Sept. 21, 2001	180159
Kansas:					
Johnson (FEMA Docket No. 7604).	City of Lenexa	June 19, 2001, June 26, 2001, *Legal Record*.	The Honorable Joan Bouman, Mayor, City of Lenexa, 12350 W. 87th Street Parkway, Lenexa, Kansas 66215.	May 31, 2001	200168
Johnson (FEMA Docket No. 7604).	City of Shawnee	June 21, 2001, June 28, 2001, *Journal Herald*.	The Honorable Jim Allen, Mayor, City of Shawnee, 11110 Johnson Drive, Shawnee, Kansas 66203.	May 31, 2001	200177
Nebraska: Lancaster (FEMA Docket No. 7606).	City of Lincoln	April 19, 2001, April 26, 2001 *Lincoln Journal Star*.	The Honorable Don Wesely, Mayor, City of Lincoln, 555 South 10th Street, Room 208, Lincoln, Nebraska 68508.	March 13, 2001	315273
Ohio: Summit (FEMA Docket No. 7606).	City of Twinsburg	August 9, 2001, August 16, 2001, *Twinsburg Bulletin*.	The Honorable K. A. Procop, Mayor, City of Twinsburg, 10075 Ravenna Road, Twinsburg, Ohio 44087.	November 15, 2001 ...	390534
Oklahoma: Jefferson (FEMA Docket No. 7606).	City of Waurika	July 5, 2001, July 12, 2001, *Waurika News-Democrat*.	The Honorable Biff Eck, Mayor, City of Waurika, 122 South Main, Waurika, Oklahoma 73573.	October 11, 2001	400076
Texas:					
Hidalgo (FEMA Docket No. 7604).	City of Edinburg	May 24, 2001, May 31, 2001, *Edinburg Daily Review*.	The Honorable Joe Ochoa, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540.	May 14, 2001	480338
Hidalgo (FEMA Docket No. 7604).	Unincorporated Areas	May 24, 2001, May 31, 2001, *Monitor*.	The Honorable Jose E. Pulido, Hidalgo County Judge, P.O. Box 1356, Edinburg, Texas 78540.	May 17, 2001	480334
Denton (FEMA Docket No. 7606).	Town of Little Elm	July 12, 2001, July 19, 2001, *Denton Record-Chronicle*.	The Honorable Jim Pelley, Mayor, Town of Little Elm, P.O. Box 129, Little Elm, Texas 75068.	October 18, 2001	481152

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

Dated: January 8, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–802 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7608]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

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

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

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (E-mail) *matt.miller@fema.gov.*

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

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

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

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

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

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

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

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

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Craighead.	City of Jonesboro	Sept. 4, 2001, Sept. 11, 2001, *Jonesboro Sun*.	The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845.	Aug. 15, 2001	050048
Indiana:					
Howard	Unincorporated Areas	Oct. 23, 2001, Oct. 30, 2001, *Kokomo Tribune*.	Mr. John Harbaugh, President, Howard County Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	Oct. 12, 2001	180414
Howard	City of Kokomo	Oct. 23, 2001, Oct. 30, 2001, *Kokomo Tribune*.	The Honorable James Trobaugh, Mayor, City of Kokomo, 100 South Union Street, Kokomo, Indiana 46901.	Oct. 12, 2001	180093
Minnesota: Winona.	Unincorporated Areas	Dec. 21, 2001, Dec. 28, 2001 *Winona Daily News*.	Mr. David Stoltman, Chairperson, Winona County, Board of Commissioners, 177 Main Street, Winona, Minnesota 55987.	Mar. 29, 2002	270525
Missouri:.					
St. Charles ..	City of Cottleville	Oct. 5, 2001, Oct. 12, 2001, *St. Charles Journal*.	The Honorable Robert Powers, Mayor, City of Cottleville, P.O. Box 387, Cottleville, Missouri 63338.	Jan. 11, 2002	290898
St. Charles ..	Unincorporated Areas	Oct. 5, 2001, Oct. 12, 2001, *St. Charles Journal*.	Mr. Joe Ortwerth, County Executive, St. Charles County, 201 North Second Street, St. Charles, Missouri 63301.	Jan. 11, 2002	290315
Ohio: Lorain	City of Avon Lake	Oct. 24, 2001, Oct. 31, 2001, *Morning Journal*.	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon Belden Road,Avon Lake, Ohio 44012–1699.	Jan. 30, 2002	390602
Oklahoma:					
Tulsa	City of Broken Arrow ...	Oct. 18, 2001, Oct. 25, 2001, *Broken Arrow Ledger*.	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610Broken Arrow, Oklahoma 74013.	Jan. 24, 2002	400236
Tulsa	City of Broken Arrow ...	Nov. 1, 2001, Nov. 8, 2001, *Broken Arrow Ledger*.	The Honorable James Reynolds, Mayor, City of Broken Arrow, 220 South First Street, Broken Arrow, Oklahoma 74012.	Feb. 7, 2002	400236

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma	City of Edmond	Nov. 1, 2001, Nov. 8, 2001, *Edmond Sun*.	The Honorable Saundra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73080.	Oct. 15, 2001	400252
Oklahoma	City of Oklahoma City	Dec. 5, 2001, Dec. 12, 2001, *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Mar. 13, 2002	405378
Texas:					
Dallas and Ellis.	City of Cedar Hill	Oct. 19, 2001, Oct. 26, 2001, *Southwest Morning News*.	The Honorable Robert L. Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, Texas 75106.	Jan. 24, 2002	480168
Comal	Unincorporated Areas	Nov. 16, 2001, Nov. 23, 2001, New Braunfels Herald-Zeitung.	The Honorable Danny Scheel, Judge, Comal County, 150 North Seguin Street, New Braunfels, Texas 78130.	Feb. 22, 2002	485463
Denton	City of Denton	Nov. 14, 2001, Nov. 21, 2001, *Denton Record Chronicle*.	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	Feb. 20, 2002	480194
Collin	City of Frisco	Dec. 12, 2001, Dec. 19, 2001, *Plano Star Courier*.	The Honorable Kathy Seei, Mayor, City of Frisco, 6891 Main Street, Frisco, Texas 75034.	Mar. 20, 2002	480134
Dallas	City of Garland	Dec. 21, 2001, Dec. 28, 2001, *Garland Morning News*.	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	Nov. 9, 2001	485471
Dallas and Ellis.	City of Grand Prairie	Oct. 19, 2001, Oct. 26, 2001, *Arlington Morning News*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	Jan. 24, 2002	485472
Ellis, Tarrant, and Dallas.	City of Grand Prairie	Nov. 14, 2001, Nov. 21, 2001, *Arlington Morning News*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	Oct. 17, 2001	485472
Harris	Unincorporated Areas	Nov. 8, 2001, Nov. 15, 2001, *Houston Chronicle*.	The Honorable Robert Eckels, Judge, Harris County, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Feb. 14, 2002	480287
Dallas	City of Irving	Dec. 20, 2001, Dec. 27, 2001, *Irving Morning News*.	The Honorable Joe H. Putnam, Mayor, City of Irving, P.O. Box 152288, 825 West Irving Boulevard, Irving, Texas 75015–2288.	Mar. 28, 2002	480180
Galveston	City of League City	Dec. 13, 2001, Dec. 20, 2001, *Galveston County Daily News*.	The Honorable A.T. Frankovich, Mayor, City of League City, City Hall, Suite 216, 200 West Walker, League City, Texas 77573.	Mar. 21, 2002	485488
Ellis	City of Midlothian	Nov. 8, 2001, Nov. 15, 2001, *Midlothian Mirror*.	The Honorable David Setzer, Mayor, City of Midlothian, 104 West Avenue E, Midlothian, Texas 76065–0000.	Feb. 14, 2002	480801
Parker	Unincorporated Areas	Sept. 12, 2001, Sept. 19, 2001, *Weatherford Democrat*.	The Honorable Mark Riley, Judge, Parker County, 1 Court House Square, Weatherford, Texas 76086.	Aug. 9, 2001	480520
Collin and Dallas.	City of Richardson	Nov. 20, 2001, Nov. 27, 2001, *Dallas Morning News*.	The Honorable Gary A. Slagel, Mayor, City of Richardson, P.O. Box 830309, Richardson, Texas 75083–0309.	Feb. 26, 2002	480184
Bexar	City of San Antonio	Dec. 21, 2001, Dec. 28, 2001, *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Mar. 29, 2002	480045

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

Dated: January 8, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–803 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

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

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

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

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

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

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

Regulatory Flexibility Act. The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) (Modified)
AR	Patterson (City), Woodruff County (FEMA Docket No. 7601).	Cache River	U.S. Highway 64 Bridge (COE) (Gage)	*197
Maps are available for inspection at City Hall, 123 South Main, Patterson, Arkansas.				
IA	Council Bluffs (City), Pottawattamie County (FEMA Docket No. 7601).	Indian Creek	At approximately 1600 feet downstream of U.S. Highway 275.	*977
			At approximately 100 feet downstream of Frank Street.	*1023
Maps are available for inspection at the Building Division, City Hall, 209 Pearl Street, Room 207, Council Bluffs, Iowa.				

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

Dated: January 8, 2002.

Robert F. Shea, Jr.,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–801 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[IB Docket No. 00–106, FCC 01–332]

Review of Commission Consideration of Applications Under the Cable Landing License Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts streamlining procedures for processing applications for submarine cable landing licenses. The Commission initiated this proceeding to consider measures to facilitate the expansion of capacity and facilities-based competition in the submarine cable market. The Commission adopted measures designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.

DATES: Effective March 15, 2002 except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2) and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Public comments on the information collection requirements are due on or before February 13, 2002. OMB must submit written comments on the information collection requirements on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to*jboley@fcc.gov*,and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to*edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1499. For additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 01–332, adopted on November 8, 2001, and released on December 14, 2001. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://www.fcc.gov/bureaus/international/Orders/2001/fcc01332/txt.*The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893. Fax: 202–863–2898, e-mail *qualexint@aol.com.*

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in which it proposed streamlining procedures for applications seeking submarine cable landing licenses (65 FR 41613, July 6, 2000). This proceeding was one of a series of such efforts the Commission has undertaken to benefit U.S. consumers by expediting regulatory processing and enhancing the competitiveness of service providers in the global communications marketplace.

2. On November 8, 2001, the Commission adopted a Report and Order (Order) in this proceeding that focused on the objectives set out in the NPRM: (1) To institute an expedited licensing process to speed the deployment of cable capacity to the market; (2) to ensure careful Commission review of certain applications to guard against anti-competitive behavior, and (3) to adopt a pro-competitive model that could be used around the world.

3. The NPRM contained streamlining options that commenters found to be too complex and burdensome. In response to the comments, the Commission adopted a streamlining approach that tracks the streamlining procedures currently used for section 214 authorizations of international telecommunications services.

4. The Commission developed an approach under which most applications should be streamlined. An application will qualify for streamlined processing if the applicants have no affiliation with a carrier that possesses market power in the cable's destination markets. If an applicant has an affiliation with a carrier with market power in any of the cable's World Trade Organization (WTO) Member destination markets, the application will be eligible for streamlined processing if each applicant with such foreign carrier affiliation certifies that it will accept standard competitive safeguards. An application that includes an applicant that is, or is affiliated with, a carrier that has market power in a cable's non-WTO Member destination market will not be eligible for streamlining. To determine affiliation, the Order applies the twenty-five percent (25%) ownership affiliation standard that is currently applied to international section 214 and cable landing license applications.

5. The standard competitive safeguards are designed to detect and deter harm to competition in the United States that may result from a foreign carrier's market power. The safeguards include a requirement to file quarterly provisioning and maintenance reports and quarterly circuit status reports. Licensees concerned about public disclosure of the reports will be able to request a standard protective order for confidential treatment of the information.

6. The Order's competitive safeguards also include a ''no special concessions'' rule that prohibits all licensees from directly or indirectly agreeing to accept a ''special concession'' from a foreign carrier with market power in one or more of the cable's destination markets. The Order defines a special concession as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and

interconnection to the public switched telecommunications network. The rule will apply to all licenses issued after the effective date of the Order. In addition, existing licensees may seek to modify their licenses to substitute this targeted safeguard for the current prohibition against any exclusive arrangements.

7. The Order also adopted a requirement that all cable landing licensees, like international section 214 carriers, must notify the Commission of any foreign carrier affiliations acquired after the issuance of a license where the affiliation is with a carrier in a market at the foreign end of the cable. This rule will be applied to all licensees of all submarine cables, whether authorized by the Commission prior to or after the effective date of the rules adopted herein. The Commission concluded that this rule would provide additional protection against possible anti-competitive conduct.

8. Streamlined processing is optional, and thus applicants may elect to file under the traditional procedures. Moreover, although the Order did not mandate electronic filing of applications, applicants are encouraged to file electronically. Applications that meet the criteria for streamlined processing will be acted upon in a period of forty-five (45) days following the public notice announcing the application as acceptable for filing and eligible for streamlining. Applications acceptable for filing but ineligible for streamlining will be acted upon within ninety (90) days unless the Commission notifies the applicant that the application presents issues that require additional scrutiny, in which case the Commission will extend the review for another ninety (90) days. The Commission delegated to the International Bureau the authority to identify particular applications that, although otherwise eligible for streamlining, may warrant additional public comment and require consideration on a case-by-case basis.

9. The Commission declined to adopt a specific timeframe by which it will issue public notices of applications accepted for filing. Rather, it will continue its practice of issuing public notices of applications accepted for filing in an expeditious manner. The Commission adopted the procedure used for section 214 applications of not routinely removing applications from streamlining based on the filing of comments on competitive or other issues that a party might seek to raise. In addition, the Commission adopted its proposal to grant applications by public notice unless a formal written order is deemed necessary.

10. The Commission adopted a new rule that will require fewer entities to become applicants/licensees. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a landing station in the United States; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In addition, the Commission established a process for an existing licensee that is not a U.S. landing party and owns or controls less than five percent (5%) of the cable system to seek removal from a submarine cable landing license. The Commission also clarified its rule that once an entity is a licensee, it is subject to the Commission's rules for modifications, assignments and transfers of control of interests in cable landing licenses, even where these interests are less than five percent (5%). The Commission will continue to require applicants for a cable landing license to identify all original owners, including those with less than five percent (5%) interest.

11. The Commission reminded applicants seeking common carrier landing licenses that, in addition to the cable landing license application, they must file an application for section 214 authority for the construction of new lines under § 63.18(e)(4) of the Commission's rules.

12. The Commission adopted a new process designed to replace prior review of *pro forma* transactions with a post-transaction notification procedure, thereby allowing entities to proceed with their *pro forma* transactions without delay. In addition, the Commission provided that an existing licensee may file an application to modify its license to take advantage of this post-transaction notification procedure.

13. To provide clear and publicly available conditions for licenses, the Commission codified routine conditions that traditionally have been attached to all cable landing licenses. In addition, the Commission codified the new streamlining procedures, the no special concessions rule for all licensees, the reporting requirements, the *pro forma* procedures, and the applicant-licensee rule.

14. The Order also addressed other issues raised in the NPRM or by commenters. The Commission declined to eliminate the distinction between cables operated on a common carrier and private carrier basis. The Commission suggested that parties seeking modifications to existing fee structures pursue these requests through the annual rulemaking process specifically designated for this purpose. The Commission declined to adopt suggestions to reduce the ownership information required in cable landing license and section 214 applications, deferring this issue to its 2002 biennial review of all of its rules. The Commission clarified its rule regarding the type of information an applicant must provide in its specific description of cable landing stations.

Procedural Matters

15. *Paperwork Reduction Act.* The Order contained modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 13, 2002. OMB notification of action is due March 15, 2002. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0944.

Title: Applications under the Cable Landing License Act.

Form Number: N/A.

Type of Review: Revised collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 25.

Number of Responses: 271.

Estimated Time Per Response: An average of 4 hours per response.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 995 hours.

Total Annual Costs: $352,425.

Needs and Uses: The information will be used by the Commission to determine the qualifications of applicants to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or

involved in similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

16. *Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Review of Commission Consideration of Applications under the Cable Landing License Act, Notice of Proposed Rulemaking (NPRM). The Commission sought written public comment on the proposals of the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. (5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

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

17. In recent years, there has been growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic. Because of this increased demand for capacity, the rapid pace of technological development, and the emergence of non-traditional ownership and financing structures in the submarine cable marketplace, the International Bureau reviewed its policies for licensing submarine cables. As a result of the review, the Commission initiated this proceeding.

18. The Order adopts streamlining procedures for processing applications for submarine cable landing licenses. The streamlining procedures are designed to promote the expansion of capacity and facilities-based competition in the submarine cable market, which should increase innovation and lower prices for U.S. consumers of international communications services. The measures also are designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and the government, while preserving the Commission's ability to guard against anti-competitive behavior.

19. The measures adopted in the Order are part of the Commission's continuing streamlining efforts. We recognize the importance of reducing regulatory costs, providing regulatory certainty, and facilitating the planning of financial transactions. The procedures contained in the Order should allow participants in the submarine cable market to make business decisions more readily.

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

20. There were no comments in response to the IRFA. In general, commenters were very supportive of the agency's proposal to streamline the submarine cable landing license process. However, some commenters were concerned that the options proposed in the NPRM could be burdensome and time-consuming for both applicants and Commission staff, and, instead of expediting the licensing process, could slow the licensing process. Thus, commenters proposed alternatives that more closely resembled the streamlining process currently used by the agency for processing international section 214 authorizations. The Order adopts an approach to streamlining that reflects the concerns raised by commenters.

21. Commenters in this proceeding presented a number of approaches and/or criteria for determining whether an application would be eligible for streamlined processing. The Order adopts an eligibility test for cables to World Trade Organization (WTO) Member countries that focuses on whether the applicants are, or are affiliated with, carriers with market power in the cable's destination market. Cables without such affiliations will be eligible for streamlining. Cables with such affiliations will be eligible if the applicants/licensees with such affiliations comply with reporting requirements that are similar to existing dominant carrier reporting requirements applicable to section 214 carriers that have affiliations with market power carriers in foreign markets. (*See* 47 CFR 63.10). In addition, all licensees will be subject to the prohibition against entering into special arrangements with foreign market-power carriers. The Commission believes that the rules and regulations adopted herein both will respond to the commenters' proposals and preserve the Commission's ability to guard against anti-competitive behavior that could result in harm to consumers in the U.S. market.

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

22. The RFA directs agencies to provide a description of, and, where feasible, estimate of, the number of small entities that may be affected by the proposals, if adopted. The Regulatory Flexibility Act 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 Section 3 of 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.

23. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. Some of these telephone communications companies may have ownership interests in submarine cables or use such cables to provide international service. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline 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 wireline 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, we are 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, we estimate that 2,295 or fewer of these wireline companies are small entities that might be affected by these proposals.

24. The streamlining measures contained in the Order are available to entities applying for a license to land or operate submarine cables under the Cable Landing License Act (or entities applying to assign or transfer control of interests in existing submarine cable landing licenses). The measures, however, may indirectly affect other entities as well, including users of submarine cable service such as Internet

service providers (ISPs) that lease capacity or purchase indefeasible rights of use (IRUs) on cable systems. The policies and rules adopted in the Order will reduce the burden on all applicants regardless of size, by permitting applicants to seek to have their applications granted in a more expeditious manner. We do not have precise numbers for the small entities that will be affected by the policies and rules. Agency data indicates there have been approximately 50 cable landing applications filed with the Commission since 1992, but the total number of licensees at any particular time is difficult to determine, because many licenses are jointly held by several licensees and assignments and transfers of control of interests occur on a regular basis. Based on this information, we would estimate that, over the next five years, the streamlining procedures may benefit as many as 50 applicants meeting the SBA definition of a small entity.

25. In addition to expediting the processing of applications, the Order will require fewer entities to become applicants/licensees. This change will further reduce the number of small entities subject to the rules and regulations. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a U.S. landing station; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In order to afford existing cable landing licensees this same opportunity, small entities that meet the criteria may request to be removed from the cable landing license.

26. We note that it is difficult to determine with precision the number of small entities that will be affected by this Order. For example, some small entities with less than five percent (5%) ownership may elect to become licensees. We will be able to compile more specific data only after small entities file applications seeking removal from existing cable landing licenses. However, the following example of cable ownership interests will provide a good illustration of the potential number of small entities that could be exempt from the requirements of the Order. According to agency data at the time of application, the percentage of ownership interests for an existing submarine cable system, the TAT–14 cable, were as follows: four U.S. carriers owned five percent (5%) or greater (these four carriers owned a total of 32.57 percent); fifteen U.S. carriers owned less than five percent (5%) (these fifteen carriers owned a total of 16.93 percent); and thirty-two foreign carriers owned the remaining 50.50 percent.

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

27. Any reporting or recordkeeping requirements imposed on small entities will be insignificant. Generally, applicants seeking a cable landing license will submit the same information that is currently required by the rules. Applicants may continue to file for a license under the existing procedures, and some applicants will not meet the eligibility criteria for streamlined processing. Applicants may file electronic or paper applications.

28. We believe that many small entities below the five percent (5%) ownership criteria may decide not to be cable landing license applicants, and therefore, such entities will not be subject to the reporting, recordkeeping, or compliance requirements applicable to licensees. Small entities that are currently licensees, and meet these criteria, may file an application requesting that they be removed from the license. The application would demonstrate that the entity: (1) Does not own or control a U.S. cable landing station; and (2) holds less than five percent (5%) interest in the cable system. The application would be filed with the Commission and copies would be served on each other licensee of the cable system. This burden should be minimal because the information would be readily available from the information that the entity provided at the time of becoming an initial applicant or from other business records showing an increase or decrease of ownership interest. As an existing licensee of a cable landing license, the entity would have ready access to the names and addresses of other licensees. Thus, the service burden also would be minimal.

29. The Order also adopts standard competitive safeguards that will impose additional reporting burdens on certain entities. We believe, however, that very few small entities will be burdened with this requirement. Reporting requirements will be imposed only on those applicants that have an affiliation with a carrier with market power in any of the cable's destination markets. These applicants will be required to provide provisioning and maintenance reports that include: (a) Identification of each facility or service provisioned and/or maintained; (b) for provisioned facilities and services, the volume or quantity provisioned and the order-to-delivery intervals; and (c) for each facility and service, the number of outages and intervals to restoration. Also, applicants will be required to provide quarterly circuit status reports, on a facility-specific basis, in the format set out by the Commission's annual circuit status manual. If applicants have a concern over the public disclosure of their reports, they may seek confidential treatment of the information and request a standard protective order.

30. The Order also adopts a rule that requires licensees to notify the Commission of new affiliations that they acquire with foreign carriers in a cable's destination market. If the Commission deems it necessary, it will impose on the newly affiliated licensee the reporting requirements discussed above. This rule is similar to the notification rule that applies in the context of international section 214 carriers, *see* 47 CFR 63.11. We believe this reporting requirement will have minimal applicability to small entities because it will apply only to licensees, and it is likely, under our rules, that few small entities (that is, those independently owned and operated companies with no more than 1500 employees) will be required to become licensees.

31. The Order also adopts a new process designed to remove prior Commission review of pro forma assignments or transfers of control of interests in submarine cable landing licenses. Again, this process will have minimal applicability to small entities to the extent they are not cable licensees. Pro forma transactions do not result in a change in the ultimate control of the interest in the cable landing license or in changes to the cable system itself as previously evaluated at the time of the initial license application. Under the Order, a pro forma assignee or a person or company that is the subject of a pro forma transfer of control of an interest in a cable landing license will no longer be required to seek prior approval, but if electing post-transaction notification, must: (1) Notify the Commission no later than thirty (30) days after the pro forma transaction is consummated; (2) certify that the assignment or transfer of control is pro forma, and together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control; and (3) provide an update to any ownership information required by our rules. Under this new rule, the burden of seeking prior approval would be eliminated for most entities, thus allowing them to proceed with their pro forma transaction without delay. Entities would file the same information after the transaction instead of prior to the transaction. The Order provides that

existing licenses could be modified, at a licensee's request, to be subject to this post-transaction process. The licensee would be required to file an application with the Commission seeking a modification of its license to incorporate this limited exception to the prior approval requirement currently set forth in the applicable license condition. This new process will impose a slight burden on applicants that have been granted a cable landing license and wish to take advantage of this new process. Presumably licensees will only subject themselves to this burden if they believe the benefit of expedited post-transaction processing of pro forma assignments or transfers of control will offset any burden. Similarly, the Order states that licensees of previously authorized cables may file applications to modify their licenses to substitute the new, more narrowly tailored ''no special concessions'' rule for the ''no exclusive arrangements'' condition contained in existing licenses.

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

32. 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 (among others): (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 reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

33. In the NPRM, we requested comment on whether small entities would be adversely affected by the proposals and whether the proposals would enable small entities to respond to the demands of the market with minimum regulatory oversight, delays, and expenses. Commenters did not specifically address the impact on small entities. Rather, commenters expressed concerns that the NPRM proposals could be burdensome and time-consuming on all entities. Commenters proposed alternative measures more aligned with the existing section 214 streamlining procedures. As a result, the Order adopts measures that are closely modeled on the streamlining process for international section 214 authorizations which has been successful and not burdensome.

34. The procedures adopted in the Order are designed to provide more certainty and flexibility for applicants, encourage investment and infrastructure development by multiple providers, expand available submarine cable capacity, and decrease application processing time. This decision extends the benefits of streamlined processing to as many applicants as possible, including small entities. It reduces the regulatory and procedural burdens while preserving the Commission's ability to guard against anti-competitive behavior. This streamlined processing may benefit small entities especially because the procedures should facilitate entry by such entities into the submarine cable market and expand international services available to such entities. In addition, we have developed a definition of ''licensee'' that should permit a large number of small entities to be exempt from the requirements contained in the Order.

35. Finally, the reporting requirements and other measures adopted in the Order will minimize any economic impact on small entities. The reporting requirements, which apply only to certain licensees, will allow the Commission to monitor and detect anti-competitive behavior without imposing unnecessarily burdensome regulations on a U.S. licensee due to its affiliation with a foreign carrier.

36. To simplify compliance with the rules and requirements, the Order codifies the submarine cable landing license conditions. This step will provide clear and publicly available standard conditions for all entities. Also, applicants will no longer be required to submit a letter affirmatively accepting the terms and conditions of the cable landing license.

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

Ordering Clauses

37. Accordingly, it is ordered that, pursuant to sections 1, 4(i) and (j), 201–255 303(r) of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), and the Cable Landing License Act, 47 U.S.C. 34–39 and Executive Order No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. 301, this Report and Order *is hereby adopted* and the Commission's rules, 47 CFR part 1, *are amended* as set forth in the Rule Changes.

38. *It is further ordered* that the policies, rules and requirements established in this decision *shall take effect* March 15, 2002, except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2), and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

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

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications miscellaneous rules relating to common carriers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(7), and (a)(8); redesignating paragraph (a)(9) as (a)(10); adding new paragraphs (a)(9), (a)(11), (g) through (m) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those

coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

* * * * *

(7) A list of the proposed owners of the cable system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable;

(8) For each applicant of the cable system, a certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a foreign cable landing station in any of the cable's destination markets. Include the citizenship of each applicant and information and certifications required in § 63.18(h) through (k), and in § 63.18(o), of this chapter;

(9) A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and

* * * * *

(11) (i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to § 1.768, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. *See § 1.768. See also* paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).

(iii) An assignee or transferee shall notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

* * * * *

(g) *Routine conditions.* Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002:

(1) Grant of the cable landing license is subject to:

(i) All rules and regulations of the Federal Communications Commission;

(ii) Any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and

(iii) Any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;

(2) The location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes;

(3) The licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;

(4) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended;

(5)(i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and from agreeing to accept special concessions in the future.

(ii) For purposes of this section, a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

Note to paragraph (g)(5): Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.*

(6) Except as provided in paragraph (g)(7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Commission gives prior consent in writing;

(7) A pro forma assignee or a person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro forma transfer of control must notify the Secretary, Federal Communications Commission,

Washington, DC 20554, with a copy to the Chief, International Bureau, Federal Communications Commission, no later than thirty (30) days after the assignment or transfer of control is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment or transfer of control was pro forma, as defined in § 63.24(a) of this chapter, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. A single letter may be filed for an assignment or transfer of control of more than one license issued in the name of a licensee if each license is identified by the file number under which it was granted;

(8) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. *See* paragraph (a)(5) of this section;

(9) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of § 1.1307 implementing the National Environmental Policy Act of 1969. *See* § 1.1307(a) and (b). The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. *See also* § 1.1306 note 1 and § 1.1307(c) and (d);

(10) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order No. 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(12) The licensee shall comply with the requirements of § 1.768;

(13) The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules; and

(14) The licensee shall notify the Secretary, Federal Commissions Commission, Washington, DC 20554, in writing, within thirty (30) days of the date the cable is placed into service, of the date the cable was placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

(h) *Applicants/Licensees.* Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:

(1) Any entity that owns or controls a cable landing station in the United States; and

(2) All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.

(i) *Processing of cable landing license applications.* The Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Commission deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an applicant does not seek streamlined processing, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

(j) *Applications for streamlining.* Each applicant seeking to use the streamlined grant procedure specified in paragraph (i) of this section shall caption its application and any cover letter with ''Application for Cable Landing License—Streamlined Processing Requested.'' Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230; and Defense Information Systems Agency, Code RGC, 701 S. Courthouse Road, Arlington, Va. 22204, and shall certify such service on a service list attached to the application or other filing.

(k) *Eligibility for streamlining.* Each applicant must demonstrate eligibility for streamlining by:

(1) Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;

(2) Demonstrating pursuant to § 63.12(c)(l)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or

(3) Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in paragraph (l) of this section. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

(l) *Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's WTO Destination Market.* Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j) and (k) of this section, must comply with the following requirements:

(1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:

(i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);

(ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and

(iii) The number of outages and intervals between fault report and facility or service restoration; and

(2) File quarterly circuit status reports, within ninety (90) days from the end of each calendar quarter and in the format set out by the § 43.82 of this chapter annual circuit status manual with the exception that activated or idle circuits must be reported on a facility-by-facility basis and derived circuits need not be specified. *See* § 63.10(c)(5) of this chapter.

(m) (1) Except as specified in paragraph (m)(2) of this section, amendments to pending applications, and applications to modify a license, including amendments or applications to add a new applicant or licensee, shall be signed by each initial applicant or licensee, respectively. Joint applicants or licensees may appoint one party to act as proxy for purposes of complying with this requirement.

(2) Any licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license. Such application must include a demonstration that the applicant is not required to be a licensee under paragraph (h) of this section and that the remaining licensee(s) will retain collectively de jure and de facto control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license, and must be served on each other licensee of the cable system.

Note to § 1.767: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include any entity that owns or controls a cable landing station in a foreign market.

3. Add § 1.768 to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

Any entity that is licensed by the Commission (''licensee'') to land or operate a submarine cable landing in a particular foreign destination market that becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, including an entity that owns or controls a cable landing station in that market, shall notify the Commission of that affiliation.

(a) *Affiliations requiring prior notification:* Except as provided in paragraph (b) of this section, the licensee must notify the Commission, pursuant to this section, forty-five (45) days before consummation of either of the following types of transactions:

(1) Acquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.

(b) *Exceptions:* (1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead by filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier, regardless of whether the destination market where the cable lands is a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an international section 214 application or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in a cable landing station or in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the licensee certifies that the destination market where the cable lands is a WTO Member and provides certification to satisfy either of the following:

(i) The licensee demonstrates that its foreign carrier affiliate lacks market power in the cable's destination market pursuant to § 63.10(a)(3) of this chapter (*see* § 63.10(a)(3) of this chapter); or

(ii) The licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation. *See* § 1.767(l).

(c) *Notification after consummation:* Any licensee that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.

Example 1 to paragraph (c). Acquisition by a licensee (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the licensee) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent (25%) but not controlling is subject to paragraph (c) of this section but not to paragraph (a) of this section.

Example 2 to paragraph (c). Notification of an acquisition by a licensee of a hundred percent (100%) interest in a foreign carrier may be made after consummation, pursuant to paragraph (c) of this section, if the foreign carrier operates only as a resale carrier.

Example 3 to paragraph (c). Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent (25%) interest in the capital stock of the licensee may be made after consummation, pursuant to paragraph (c) of this section, if the licensee demonstrates in the post-notification that the foreign carrier lacks market power in the cable's destination market or the licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation.

(d) *Cross-reference:* In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to the requirements of the license granted under § 1.767 or § 1.767(g), the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. *See* § 1.767(g).

(e) *Contents of notification:* The notification shall certify the following information:

(1) The name of the newly affiliated foreign carrier and the country or countries at the foreign end of the cable in which it is authorized to provide telecommunications services to the public or where it owns or controls a cable landing station;

(2) Which, if any, of those countries is a Member of the World Trade Organization;

(3) The name of the cable system that is the subject of the notification, and the

FCC file number(s) under which the license was granted;

(4) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent (10%) of the equity of the licensee, and the percentage of equity owned by each of those entities (to the nearest one percent (1%));

(5) Interlocking directorates. The name of any interlocking directorates, as defined in § 63.09(g) of this chapter, with each foreign carrier named in the notification. *See* § 63.09(g) of this chapter.

(6) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the licensee shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the licensee shall include the actual date of closing.

(7) If a licensee relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the licensee is relying. Licensees relying upon the exceptions in paragraph (b)(2) of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with the reporting requirements in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) If the licensee seeks to be excepted from the reporting requirements contained in § 1.767(l), the licensee should demonstrate that each foreign carrier affiliate named in the notification lacks market power pursuant to § 63.10(a)(3) of this chapter. *See* § 63.10(a)(3) of this chapter.

(g) *Procedure.* After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within fourteen (14) days of the public notice.

(1) If the Commission deems it necessary at any time before or after the deadline for submission of public comments, the Commission may impose reporting requirements on the licensee based on the provisions of § 1.767(l). *See* § 1.767(l).

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section in which the foreign carrier is authorized to operate in, or own a cable landing station in, a non-WTO Member, the licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market by demonstrating either that the foreign carrier lacks market power in that destination market pursuant to § 63.10(a)(3) of this chapter or the market offers effective opportunities for U.S. companies to land and operate a submarine cable in that country. If the licensee is unable to make either required showing or is notified that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to paragraph (g)(2): The assessment of whether a destination market offers effective opportunities for U.S. companies to land and operate a submarine cable will be made under the standard established in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket Nos. 97–142 and 95–22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23946 at paragraph 130, 62 FR 64741, December 9, 1997.

(h) All licensees are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five (45) days after filing. During this period if the information furnished is no longer accurate, the licensee shall as promptly as possible, and in any event within ten (10) days, unless good cause is shown, file with the Secretary in duplicate a corrected notification referencing the FCC file numbers under which the original notification was provided.

(i) A licensee that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty (20) days after filing. Such a request must be made prominently in a cover letter accompanying the filing.

Note to § 1.768: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include an entity that owns or controls a cable landing station in a foreign market.

[FR Doc. 02–789 Filed 1–11–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 98–156; FCC 01–357]

Certification of Equipment in the 24.05–24.25 GHz Band at Field Strengths up to 2500 mV/m

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to allow the operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths of up to 2500 mV/m. Devices operating at these higher levels will be required to use highly directional antennas to minimize the possibility of creating harmful interference to other services in the band. This action will facilitate the introduction of a variety of new, innovative products and services in the band, such as managing the network traffic on a high-speed wireless internet service or connecting a multiple building intra-office network.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *nmcneil@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket 98–156, FCC 01–357, adopted December 11, 2001 and released December 14, 2001. The full text of this document is available on the Commission's internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* e-mail, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. In the *NPRM* in this proceeding, the Commission proposed to modify § 15.249 to allow operation of fixed point-to-point devices in the 24.05–24.25 GHz band segment of the 24 GHz spectrum in accordance with the field strength limit and antenna gain requirements requested by Sierra Digital Communications, Inc., 63 FR 50185, September 21, 1998. This *Report and Order* amends § 15.249 to permit the

operation of unlicensed point-to-point transmitters in the 24.05–24.25 GHz band with field strengths up to 2500 mV/m measured at 3 meters, provided that such devices use directional antennas with gains of at least 33 dBi or a main lobe beamwidth not exceeding 3.5 degrees. Using a directional antenna with either the specified minimum gain or maximum main lobe beamwidth will produce a narrow radiation pattern thereby minimizing the area over which interference to other devices may occur. We find that it is in the public interest to allow such operations on an unlicensed basis to supplement the growing demand for licensed point-to-point facilities to satisfy important communications needs. As Sierra observes, increasing the field strength limit will promote greater use of part 15 unlicensed devices for purposes such as emergency restoration of communications in disaster situations, low-cost telecommunications delivery in rural areas, and other beneficial applications.

2. ARRL argues that the amateur service in the 24.05–24.25 GHz band uses sensitive receivers that will be threatened by part 15 devices operating pursuant to the proposed rules. We do not agree that there will be an increased risk of interference to amateur operations in the 24.05–24.25 GHz band segment. The use of a directional antenna will change the shape of the radiated radio frequency field but not the amount of geographic area contained in that field. While signals will travel further in the intended direction of communication, they will be limited in all other directions. As Sierra demonstrated in response to ARRL's concerns, the total area encompassed by the radiated field of the directional antenna will be equal to or less than the area encompassed by the radiated field of a lower-powered omni-directional antenna. We also note that § 15.245 of the rules allows field disturbance sensors to operate in the same band at 2500 mV/m. These devices have been authorized to operate for years with no adverse affects to other users in the band, including amateur operations. We thus find that, devices operating with field strengths up to 2500 mV/m with a directional antenna as prescribed herein will have the same or less interference potential as other devices currently authorized under part 15. Our decision here is also consistent with our earlier ruling in the *Report and Order* in ET Docket No. 96–8 wherein the Commission stated that the directional antenna requirement adopted for spread spectrum transmitters would ensure that the area over which harmful interference can occur is equivalent to what would be caused by a transmitter using an omni-directional antenna operating at a lower output power.

3. In an effort to ensure, to the greatest extent possible, that devices operating in accordance with these regulations will not create unwanted adjacent band interference, we are imposing more stringent operating conditions than proposed in the *NPRM.* Although the *NPRM* proposed a frequency stability requirement of only 0.003%, we will require these devices to maintain their transmitting frequency within 0.001% of nominal. Requiring 0.001% frequency stability in lieu of 0.003% will ensure that emissions remain within the authorized transmission bandwidth and minimize drift into the adjacent bands which are allocated on a primary basis to the amateur satellite service (24.00 24.05 GHz) and the DEMS (24.25–24.45 GHz) both of which are susceptible to interference from relatively low-level signals. Additionally, we are requiring, under § 15.249, that the field strength of emissions outside of the 24.05–24.25 GHz band, except for harmonics, be attenuated by at least 50 dB below the fundamental or to the general emissions limits contained in § 15.209 of the Commission's rules, whichever is the lesser attenuation.

4. Finally, we will address harmonic emissions. Section 15.209 set the limit for out-of-band emissions of part 15 devices, which is 500 uV/m at 3 meters. Harmonic emissions from transmitters operating under § 15.249 are permitted at different levels, generally higher, than other out-of-band emissions, and those limits are specified in that section. Section 15.205(b), however, provides that the § 15.209 limits shall not be exceeded in the restricted bands. All of the harmonics of the 24 GHz transmitters at issue here fall into the restricted band above 38.6 GHz, and thus must observe the 15.209 limits, rather than the less restrictive 15.249 limits. The Commission is considering in a separate proceeding, the possibility of removing the § 15.209 limits for some bands above 38.6 GHz, among other issues. For more information see *Notice of Proposed Rulemaking* in ET Docket 01–278, released October 15, 2001, 66 FR 59209, November 27, 2001.

5. In conclusion, we find that the public interest is served by permitting unlicensed point-to-point devices to operate at 2500 mV/m, under the conditions discussed, in the 24.05–24.25 GHz band. The band has accommodated unlicensed transmissions, government radar, and amateur facilities with no major conflicts. By allowing a greater variety of systems to occupy the band, we will provide the opportunity for innovative products and services to be made available to the American public as quickly as demand dictates.

Final Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (NPRM).[2] The Commission sought written public comment on the proposal in the NPRM, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in the Report and Order conforms to the RFA.[3]

A. Need for and Objective of the Rules

7. The rule changes adopted in this *Report and Order* will help satisfy the growing demand for readily available unlicensed systems in the 24 GHz band.[4] The rules will allow fixed point-to-point transmitters to operate in the 24.05–24.25 GHz band at field strengths of up to 2500 mV/m. This action will facilitate the introduction of a variety of new services to the band. The requirement to use directional antennas will minimize the possibility of creating harmful interference to existing services while, at the same time, providing for communication links of greater distances.

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

8. No comments were filed in direct response to the IRFA. Moreover, no comments in response the *NPRM* discussed small business-related issues.

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

9. 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 rules adopted herein.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning

[1] 5 U.S.C. 603.

[2] *See* ET Docket 98–156, 63 FR 50185 (1998).

[3] *See* 5 U.S.C. 604.

[4] Unlicensed transmitters are permitted to operate in the 24 GHz band pursuant to certain conditions. *See Report and Order* at paragraph 2. *See also* 47 CFR 15.249.

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

as the term ''small business concern'' under the Small Business Act.[7] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[8]

10. The Commission has not developed a definition of small entities applicable to unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees on order to qualify as a small business concern.[9] Census Bureau data indicates that there are 858 U.S. companies 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.[10]

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

11. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The changes adopted in this proceeding do not change any of the current reporting or recordkeeping requirements. Further, the regulations add permissible methods of operation and do not require the modification of any existing products.

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

12. The rule changes adopted in this *Report and Order* will permit manufacturers, including small entities, to market more diverse products in the 24 GHz band. The American Radio Relay League filed comments suggesting that the Commission also require manufacturers to maintain detailed records of their customers' installations of these devices. This information would be given to ARRL periodically to aid in coordination. The Commission believes that compliance with this additional regulation would create an undue economic burden for device manufacturers, especially smaller entities. The Commission noted that instituting such a rule could lead to more expensive part 15 equipment and slower speed to market. Therefore, the Commission declined to adopt such a requirement.

F. Report to Congress

13. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[11] In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA.

14. It is Further Ordered that 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 in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Amend § 15.249 as follows:

(a) Revise paragraph (a) introductory text;

(b) Redesignate paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f);

(c) Add new paragraph (b); and

(d) Revise newly designated paragraph (e).

§ 15.249 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, 5725–5875 MHz, and 24.0–24.25 GHz.

(a) Except as provided in paragraph (b) of this section, the field strength of emissions from intentional radiators operated within these frequency bands shall comply with the following:

* * * * *

(b) Fixed, point-to-point operation as referred to in this paragraph shall be limited to systems employing a fixed transmitter transmitting to a fixed remote location. Point-to-multipoint systems, omnidirectional applications, and multiple co-located intentional radiators transmitting the same information are not allowed. Fixed, point-to-point operation is permitted in the 24.05–24.25 GHz band subject to the following conditions:

(1) The field strength of emissions in this band shall not exceed 2500 millivolts/meter.

(2) The frequency tolerance of the carrier signal shall be maintained within ±0.001% of the operating frequency over a temperature variation of -20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(3) Antenna gain must be at least 33 dBi. Alternatively, the main lobe beamwidth must not exceed 3.5 degrees. The beamwidth limit shall apply to both the azimuth and elevation planes. At antenna gains over 33 dBi or beamwidths narrower than 3.5 degrees, power must be reduced to ensure that the field strength does not exceed 2500 millivolts/meter.

* * * * *

(e) As shown in § 15.35(b), for frequencies above 1000 MHz, the field strength limits in paragraphs (a) and (b) of this section are based on average limits. However, the peak field strength of any emission shall not exceed the maximum permitted average limits specified above by more than 20 dB under any condition of modulation. For point-to-point operation under paragraph (b) of this section, the peak field strength shall not exceed 2500 millivolts/meter at 3 meters along the antenna azimuth.

* * * * *

[FR Doc. 02–871 Filed 1–11–02; 8:45 am]

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[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration 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**.''

[8] 15 U.S.C. 632.

[9] *See* 13 CFR 121.201, NAICS Code 334220 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

[10] *See* U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663 (NAICS Code 334220).

[11] *See* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket No. 01–14; FCC 01–328]

2000 Biennial Regulatory Review—Spectrum Aggregation Limits for Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's reexamination of the need for the Commercial Mobile Radio Service (CMRS) spectrum aggregation limit, or ''spectrum cap,'' and cellular cross-interest rules as part of its 2000 biennial review of the Commission's regulations, pursuant to section 11 of the Communications Act of 1934, as amended (Communications Act). The intended effects of this action are to ''sunset'' the spectrum cap rule effective January 1, 2003; permit the Commission to consider, in conjunction with the United States Department of Justice (DOJ), substantive and processing guidelines for the Commission's case-by-case review of transactions that would raise concerns similar to those that the spectrum cap was designed to address; raise the spectrum cap to 55 MHz in all markets during the transition period; and eliminate the cellular cross-interest rule in Metropolitan Statistical Areas (MSAs), while retaining it in Rural Service Areas (RSAs).

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Lauren Kravetz Patrich or John Branscome, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order* (''*R&O*'') in WT Docket No. 01–14, FCC 01–328, adopted November 8, 2001, and released December 18, 2001, is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 Twelfth Street, S.W., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 Twelfth Street, S.W., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text is also available under the file name fcc01328.doc on the Commission's Internet site at *www.fcc.gov.*

Synopsis of Order

I. Background

A. CMRS Spectrum Cap

1. *CMRS Spectrum Aggregation Limit.* The CMRS spectrum cap provides that ''[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS * * * shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area, except that in Rural Service Areas (RSAs), * * * no licensee shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any RSA.'' 47 CFR 20.6(a). Determining whether a ''significant overlap'' exists is necessary because of the use of different licensing and service areas for cellular, broadband Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) spectrum. When a PCS license and a cellular or SMR license are involved, a significant overlap exists when ten percent or more of the population of the designated PCS licensed service area is within the Cellular Geographic Service Area (CGSA) or SMR service area(s) in question.

2. *History of the CMRS Spectrum Cap.* The CMRS spectrum cap was established in 1994, in anticipation of PCS licensing, and in recognition that direct competition was likely to develop among cellular, broadband PCS, and SMR. Previously, the Commission had imposed service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership. In adopting the CMRS spectrum cap to complement these latter two rules, the Commission found that an overall cap applicable to cellular, broadband PCS, and SMR spectrum would add certainty to the marketplace without sacrificing the benefits of pro-competitive and efficiency-enhancing aggregation. The Commission explained that, if licensees were to aggregate sufficient amounts of CMRS spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers. The Commission determined that the imposition of a cap on the amount of covered spectrum that a single entity could control in any one geographic area would limit the ability of any entity to increase prices artificially. The Commission also found that a cap on broadband PCS, SMR, and cellular spectrum holdings would prevent licensees from artificially withholding capacity from the marketplace. The Commission concluded that a 45 MHz cap provided a ''minimally intrusive means'' for ensuring that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation. *Third Report and Order* (59 FR 59945, November 21, 1994).

3. In 1996, in light of the U.S. Court of Appeals for the Sixth *Circuit's ruling in Cincinnati Bell Telephone Co.* v. *FCC* (69 F.3d 752 (6th Cir. 1995)) remanding the cellular/PCS cross-ownership restriction, the Commission eliminated the service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership, and decided to rely solely on the 45 MHz CMRS spectrum cap to ensure that multiple service providers would be able to obtain broadband PCS spectrum and thereby facilitate the development of competitive markets for wireless services. The Commission analyzed potential market concentration and again found that a 45 MHz spectrum cap was sufficient ''to avoid excessive concentration of licenses and promote and preserve competition'' while ''maintaining incentives for innovation and efficiency.''

4. In the *First Biennial Review Order* (''*First Biennial Review Order*'') (64 FR 54564, October 7, 1999), the Commission decided substantially to retain the CMRS spectrum cap, together with the cellular cross-interest rule, but ordered modifications to reflect circumstances in rural areas and to permit passive institutional investors to acquire greater non-attributable interests in CMRS carriers. The Commission concluded that the spectrum cap remained a simple and effective means of mitigating the competitive consequences of the spectrum-related barriers to entry in CMRS markets, and found that the 45 MHz limit struck the proper balance (in non-rural areas) between preserving opportunities for competitive entry and permitting carriers to achieve economies of scope and scale. The Commission did, however, raise the cap to 55 MHz in RSAs. This decision was based on findings that the potential consumer benefits in rural areas from competitive, facilities-based entry were likely to be limited by the economics of offering service to lower-density populations. The Commission also amended the spectrum cap rule to provide that equity interests of up to forty percent held by

passive institutional investors are not attributable. At the same time, the Commission adopted a waiver process to meet the spectrum requirements for third-generation (3G) and other advanced wireless services until additional spectrum for next generation applications could be allocated.

B. Cellular Cross-Interest Rule

5. *Cellular Cross-Interest Rule.* Section 22.942 of the Commission's rules limits the ability of parties to have interests in cellular carriers on different channel blocks in a single geographic area. 47 CFR 22.942. To the extent licensees on different channel blocks have any degree of overlap between their respective CGSAs, the rule prohibits any entity with an attributable interest in one licensee from having a direct or indirect ownership interest of more than five percent in the other licensee. An attributable interest is defined generally to include an ownership interest of twenty percent or more, as well as any controlling interest. However, an entity may have non-controlling and otherwise non-attributable direct or indirect ownership interests of less than twenty percent in licensees for different channel blocks in overlapping CGSAs. Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

6. *History of the Cellular Cross-Interest Rule.* The cellular cross-interest rule was adopted in 1991, when cellular licensees were the predominant providers of mobile voice services. In adopting this rule, the Commission stated that ''in a service area where only two cellular carriers are licensed per market, the licensee on one frequency block in a market should not own an interest in the other frequency block licensee in the same market.'' Thus, the Commission adopted restrictions on a party's ability to hold ownership interests in both cellular licensees in the same geographic area ''[i]n order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.'' In the *First Biennial Review Order,* the Commission determined that the cellular cross-interest rule was still required to protect against substantial anticompetitive threats from common ownership between the two cellular carriers in any given geographic area. The Commission found that cellular carriers served approximately eighty-six percent of nationwide mobile telephone subscribers at the end of 1998, and determined that the percentage was less than seventy in only a few major metropolitan markets. However, because competition from other services had increased on the whole since the rule's inception in 1991, the Commission relaxed the rule's attribution standards to the current limits described above.

C. Notice of Proposed Rulemaking

7. In the *Notice of Proposed Rulemaking* (''*NPRM*'') (66 FR 9798, February 12, 2001) (*corrected* at 66 FR 10567, February 15, 2001) in this proceeding, the Commission initiated a reexamination of the need for CMRS spectrum aggregation limits as part of its 2000 biennial regulatory review of the Commission's telecommunications regulations. Section 11 of the Communications Act requires the Commission, every two years, to review all regulations that apply to ''the operations or activities of any provider of telecommunications service'' and to ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' The *NPRM* initiated the Commission's second comprehensive review of the CMRS spectrum cap and cellular cross-interest rules, the two regulations that currently limit the aggregation of broadband CMRS spectrum.

8. The *NPRM* requested public comment, including the submission of specific market data and studies, to assist the Commission's determination of whether the CMRS spectrum aggregation rules are no longer necessary in the public interest and, if they are necessary, whether the Commission's existing spectrum limits should be modified. First, comment was requested on whether spectrum aggregation limits, including the cellular cross-interest rule, continue to enhance meaningful competition in today's CMRS marketplace. In this regard, comment was sought on the development of meaningful economic competition, as well as the potential competitive consequences of consolidation that may occur without spectrum aggregation limits. Next, comment was requested on spectrum management and other regulatory considerations, particularly in the context of spectrum suitable for broadband CMRS. Under this inquiry, the Commission sought to examine any costs that the spectrum aggregation limits may impose on the development of advanced wireless services, the possible benefits of prophylactic standards, and whether these standards promote efficiency. In addition, comment was sought on how recent international developments should affect the Commission's public interest determination.

9. The Commission also sought comment on the implications for its processes of DOJ's antitrust law enforcement responsibilities. The Commission asked whether it should defer to DOJ in CMRS license transfers, and, if so, what form such deference should take. Specifically, the Commission asked whether all transfers resulting in consolidation of spectrum below a certain threshold should be exempt from competitive analysis under section 310(d) of the Communications Act. The Commission acknowledged that antitrust laws may place adequate focus on mergers that threaten to curtail actual competition. Therefore, the Commission asked whether it may, and should, refrain from independent review of the competitive effects of a transaction that is subject to some specified level of DOJ review, and if so, what that level should be.

10. The *NPRM* also requested comment on whether specific attributes of the CMRS spectrum cap and cellular cross-interest rules should be modified, if those rules are generally retained, to allow some of the benefits that may arise from additional cross-ownership interests. To the extent that certain revisions would reduce any costs of the rules or promote public interest objectives, the Commission sought comment on how to implement them without significantly increasing barriers to entry for new competitors or reducing benefits to wireless consumers.

II. Discussion

A. Standard for Decision

1. Section 11 of the Communications Act

11. The Telecommunications Act of 1996 (1996 Act) (Public Law No. 104–104, 110 Stat. 56 (1996)) significantly amended the Communications Act to permit and encourage competition in various communications markets. Congress anticipated that the development of competition would lead market forces to reduce the need for regulation. Section 11 of the Communications Act, which was added by the 1996 Act, provides that every two years the Commission shall review all regulations that apply to ''the operations or activities of any provider of telecommunications service'' and ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' Section 11 further provides that in carrying out this review, the Commission ''shall repeal or

modify any regulation it determines to be no longer necessary in the public interest.''

12. Consistent with section 11, the Commission stated in the *NPRM* that its fundamental inquiry is whether, as a result of meaningful economic competition among providers of telecommunications services, spectrum aggregation limits are no longer necessary in the public interest. The Commission sought comment on what constitutes ''meaningful economic competition'' under section 11, and to what degree the relevant competitive conditions have changed since the Commission's last biennial review of these rules. If meaningful economic competition were found to exist, the Commission asked whether this would mean that spectrum aggregation limits have served their purpose and are no longer in the public interest, or whether public interest considerations nevertheless would warrant continued use of spectrum aggregation limits.

13. Commenters differ on how section 11 should be applied and whether there might be public interest reasons to retain spectrum aggregation limits if meaningful economic competition exists. The Commission, however, concludes that it need not, for purposes of this proceeding, go beyond the plain meaning of the text of section 11 of the Communications Act. The language places an obligation on the Commission to ''determine'' if the regulation in question ''is no longer necessary in the public interest as the result of meaningful economic competition.'' Section 11 requires the Commission to determine ''whether any of these regulations are no longer in the public interest because competition between providers renders the regulation no longer meaningful.'' The Communications Act then explicitly provides that ''the Commission *shall* repeal or modify'' any regulation that it determines is no longer necessary in the public interest as the result of meaningful economic competition. The statutory language does not impose any particular burdens on the opponents or proponents of a particular rule, but rather places the burden on the Commission to make the requisite determinations. In exercising its obligation under section 11, the language suggests that the Commission must examine why the rule was ''necessary'' in the first place and whether it is necessary any longer. Thus, in making the determination whether a rule remains ''necessary'' in the public interest once meaningful economic competition exists, the Commission must consider whether the concerns that led to the rule or the rule's original purposes may be achieved without the rule or with a modified rule.

14. The primary public interest purpose underlying the original adoption of the spectrum aggregation limits was to promote pro-competitive ends in CMRS markets. In initially setting the spectrum cap in 1994, the Commission's goal was to ''discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency.'' The Commission found that its ''goal of preventing anticompetitive outcomes'' could be accomplished by creating a cap on broadband PCS, cellular, and SMR licensees, which would ''prevent licensees from artificially withholding capacity from the market.'' Consistent with this goal, the Commission stated that the spectrum cap sought ''to promote diversity and competition in mobile services, by recognizing the possibility that mobile service licensees might exert undue market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum'' Furthermore, the absence of a spectrum cap could undermine other statutory goals related to the promotion of competition, ''such as the avoidance of excessive concentration of licenses and the dissemination of licenses among a wide variety of applicants.'' In addition, the Commission found that the cap not only promoted competition, but also benefited the public interest by allowing review of CMRS acquisitions in an administratively simple manner and lending certainty to the marketplace. In 1996 and 1999, the Commission reaffirmed the primary public interest purpose of promoting pro-competition ends in the CMRS markets. In 1996, the Commission also found that the spectrum cap, in addition to other tools at its disposal, furthered the goals of section 309(j) of the Communications Act. *CMRS Spectrum Cap Report and Order* (61 FR 33859, July 1, 1996) (*corrected* at 61 FR 51233, October 1, 1996). (The Commission notes that there are other tools to achieve goals other than competition, including case-by-case review, as well as prescribing license area designations and bandwidth assignments, and using bidding credits to create opportunities for new entrants.) In adopting the cellular cross-interest rule, the Commission acted ''[i]n order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.''

2. Meaningful Economic Competition

15. In the case of the spectrum cap and cellular cross-interest rules, the Commission's inquiry focuses on the state of competition in the consumer markets for CMRS. At the same time, the Commission recognizes that spectrum is an input in CMRS markets. Indeed, this recognition prompted adoption of the spectrum cap as a means of ensuring CMRS competition in the first place. Although participants in the mobile telephony and CMRS spectrum markets are largely the same entities under current conditions, this could change if leasing arrangements become more common. *Secondary Markets Policy Statement* (65 FR 80367, December 21, 2000). Again, the Commission emphasizes that the markets with which it is principally concerned are the output markets for services, and that conditions in the input markets provide only a partial proxy measure of competition in the output markets. Nonetheless, in the context of the output market, the state of control over the spectrum input is a relevant factor.

16. In evaluating CMRS markets, the Commission considers both actual and potential competition. In general, potential competition can be as important as actual competition in promoting desirable outcomes. In the case of CMRS, however, it appears that actual competition among those firms already providing service has been the most significant factor in the gains that have been achieved in recent years. There remains relatively little potential for additional entry into urban markets in the near term, because most licenses for currently allocated spectrum have been constructed and put into service. In rural markets, a significant number of licenses have not yet been put into service, but demographic and geographic conditions generally appear to render additional large-scale entry economically difficult to support. As additional CMRS-suitable spectrum becomes available, the overall effect on the CMRS marketplace of potential competition could change.

3. Necessity for Rules in the Public Interest

17. In determining whether its spectrum aggregation limits remain necessary in the public interest, the Commission considers the original purposes for which the rules were promulgated. The purpose underlying the spectrum aggregation limits was to promote competition in CMRS markets. An important consideration in determining the necessity for regulation is the availability of other, less

burdensome tools to achieve these ends. In the case of the CMRS spectrum aggregation limits, these tools include case-by-case review of transactions by the Commission and DOJ, as well as the Commission's ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. In addition, the Commission is also obligated, pursuant to section 332(c)(1)(C) of the Communications Act, to continue to review (as it has done six times already) the state of competition among CMRS providers. Specifically, this provision states:

> The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. 47 U.S.C. 332(c)(1)(C).

The Commission's most recent report, issued this year, has guided its decision in this proceeding, and future reports will continue to provide a useful tool for overseeing the changes, if any, in competitive market conditions. *Sixth Annual CMRS Competition Report* (''*Sixth Annual CMRS Competition Report*'') (16 FCC Rcd 13350 (2001)). Moreover, the Commission also has at its disposal various enforcement tools to ensure that CMRS carriers, which are common carriers under section 332(c) and key provisions of Title II of the Communications Act, 47 U.S.C. 332(c), 201, 202, 208, do not engage in conduct that is anti-competitive or otherwise harm consumers due to excess concentration of spectrum.

B. Analysis of Competition in the Mobile Telephony Markets

18. The Commission begins its analysis by considering the state of economic competition. Various indicators confirm the presence of meaningful economic competition in markets for CMRS. As the Commission described in the *Sixth Annual CMRS Competition Report,* and as commenters generally agree, mobile telephony markets have experienced and continue to experience strong growth, increased competition, and active innovation. (Although the Commission noted that it could not warranty the accuracy or completeness of the individual data in the *Sixth Annual CMRS Competition Report,* all of which were taken from publicly available sources, the Commission finds that, cumulatively, these data are more than adequate to inform its evaluation of meaningful economic competition.) The Commission also finds it important that competition in these markets has progressed dramatically, not only since 1994, but since its last biennial review.

19. *Number of Competitors and Concentration.* One basic indicator of meaningful economic competition is that most Americans have a choice of obtaining CMRS from several different providers of service. As of the end of 2000, about ninety-one percent of U.S. residents lived in a county that was served, at least in part, by three or more different mobile telephony providers, and seventy-five percent of the U.S. population lived in a county where five or more providers offered service. (Because the Commission's analysis was limited to publicly available sources of information, this coverage percentage is based on the number of operators serving any portion of a particular county. Consequently, some counties included in this analysis may have only a small amount of coverage from a particular provider.) Furthermore, over 133 million people lived in counties with six or more mobile telephony providers, an increase of thirty-five percent over the previous year, and thirty-four million people lived in counties served by seven or more providers, a one-year increase of 170 percent. By contrast, when the spectrum cap was first promulgated in 1994, in all but the few markets where Nextel had then launched service, consumer choice was limited to two cellular providers.

20. Measures of market concentration in the record show a substantial continuing decline in concentration in most local CMRS markets. The Commission finds that considerable entry has occurred and that meaningful competition is present, particularly given the presence of such earmarks of competition as falling prices, increasing output, and improving service quality and options. Specifically, concentration in CMRS markets, as measured by subscriber share, is falling. Calculations submitted by economist John Hayes in both this record and the previous biennial review proceeding show that Herfindahl-Hirschman Indices (HHIs) in the twenty-five largest markets, calculated based on estimated subscribed customers, have fallen by an average of fifteen to twenty-five percent over the last two years. This downward trend in concentration may be attributed in part to the continued construction of new entrants' networks, which has made these mobile telephony providers more viable competitors.

21. On the other hand, other measures of market concentration reveal moderate to high concentration levels. Using CMRS spectrum share as the capacity measure, the Commission has calculated HHIs of 1,270 to 1,801 for the fifty most populous MSAs, and 1,246 to 2,405 for a sampling of eighty counties in RSAs. These figures are generally consistent with the capacity'based HHI calculations submitted by various commenters. The Commission emphasizes, however, that caution is appropriate in employing such measures, whether they reveal a positive or negative indication of concentration. Although more concentrated markets can be less competitive and more vulnerable to anticompetitive activity than less concentrated markets, moderate to high concentration is not necessarily a threat to competition. For example, the Commission has previously found that ''an HHI analysis alone is not determinative and does not substitute for its more detailed examination of competitive considerations.'' In the case of CMRS markets, for example, limits to economies of scale, technological compatibility issues, difficulties in finding a willing seller at a reasonable price, and capital market constraints limit consolidation. Moreover, antitrust review by the DOJ and section 310(d) review by the Commission continue to serve as protection against levels of consolidation that would impair competition. Furthermore, HHI measures function as indicators of the likely competitive situation—guidelines to which other information is added, as under the DOJ/Federal Trade Commission (FTC) approach—rather than as the single factor upon which to make competitive judgments, including the judgment of whether to retain the spectrum cap rule. As the *DOJ/FTC Merger Guidelines* state, ''[b]ecause the specific standards set forth in the guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under antitrust laws.''

22. Based on the record before the Commission and publicly available evidence, however, there appears to be a disparity in the amount of actual competition existing in MSAs versus RSAs. In MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers serving some portion of the county, while in RSAs, twenty-four percent of counties have four or more facilities-based CMRS

providers. Further, in over half of RSA counties, two or fewer licensed mobile telephony carriers are currently providing service. Because these numbers include carriers that may be offering service in only a small portion of a county, they may overstate the amount of actual facilities-based competition, especially in RSAs. Moreover, the Commission's licensing records show that gaps in the footprints of the nationwide carriers tend to be greater in RSAs than in MSAs. Of the fifty most populous MSAs, forty have five licensed nationwide carriers, not counting Nextel, and the other ten have four. In a sampling of fifty average population RSA counties, by contrast, sixteen have five nationwide carriers, sixteen have four, and eighteen have fewer than four. In a sampling of thirty less populated RSA counties, eight have five nationwide carriers, nine have four, and thirteen have fewer than four. Therefore, consumers in rural areas appear to have fewer choices in terms of providers, pricing plans, and service offerings than consumers in MSAs. Commenters generally agree that rural markets have significantly less competition than metropolitan areas in large part due to population density and economics.

23. *Benefits to Consumers of Competition.* As the CMRS marketplace has developed, consumers in both MSAs and RSAs have realized the benefits of competition in the form of increased output, lower prices, and increased diversity of service offerings. For example, from 1993 to 2000, the number of subscribers using mobile phones jumped 584 percent, the amount of revenue the sector generated climbed 384 percent, and the number of people employed in the industry grew 364 percent. In addition, as the Commission described in the *Sixth Annual CMRS Competition Report,* and as commenters generally agree, prices in mobile telephony markets are falling at an accelerating rate. During 2000, the cellular telephone component of the Consumer Price Index (CPI) produced by the United States Department of Labor decreased by 12.3 percent, while the overall CPI increased by 3.4 percent. In comparison, the cellular telephone component of the CPI from December 1997 to January 1999 decreased by 9.1 percent (8.4 percent annualized), while the overall CPI increased by 1.9 percent. Several studies indicate that the entrance of new competitors into mobile telephony markets continues to reduce prices. Furthermore, mobile telephony service providers are offering new and innovative pricing plans. Most of the major carriers offer nationwide flat-rate, digital pricing plans, and several large carriers now offer regional flat-rate, digital pricing plans as well. Further, several carriers provide international roaming services to their customers. Mobile telephony providers are also offering technologically innovative services including Short Message Service (SMS), e-mail, and web-based applications. In addition, ''churn * * * and continued expansion of mobile networks into new and existing markets demonstrate a high level of competition for mobile telephony customers.''

24. To a certain degree, mobile telephony services have begun to compete with wireline services. For some, wireless service is no longer a complement to wireline service but has become the preferred method of communication. According to a recent survey by the Yankee Group, about three percent of mobile telephony subscribers rely on their wireless phone as their only phone. In another survey conducted in January 2000, twelve percent of respondents said they purchased a mobile phone instead of installing an additional wireline phone. In a survey performed for the Consumer Electronics Association, three in ten mobile phone users, and forty-five percent of mobile phone users aged eighteen to thirty-four years old, stated they would rather give up their home telephone than their mobile phone. In some areas, mobile phone use has begun to erode wireline revenue due to ''technology substitution,'' that is, the substitution of new technologies for existing ones. BellSouth, for example, stated in February 2001 that it was exiting the payphone business in part due to business lost to mobile phones.

25. A few mobile carriers have begun offering service plans designed to compete directly with wireline local telephone service. For example, Leap, through its Cricket subsidiary, now offers its Comfortable Wireless mobile telephone service in over a dozen markets. Leap's service allows subscribers to make unlimited local calls and receive calls from anywhere in the world for a flat rate of approximately $30 per month. In November 2000, Leap also claimed that sixty percent of its customers use their wireless phones as their primary phone. US Cellular, ALLTEL, and Rural Cellular Corporation similarly offer flat-rate or nearly flat-rate service plans in select markets. Several CMRS providers have received Eligible Telecommunications Carrier status, enabling them to receive universal service funding in certain states, and some carriers are using cellular or broadband PCS spectrum to offer fixed wireless services.

26. Consumers have also derived benefits in recent years from combinations as some operators have expanded their licensed service areas through acquisitions and swaps to create nationwide service providers. There are currently six nationwide mobile telephony operators: AT&T, Cingular, Nextel, Sprint, Verizon, and VoiceStream. The Commission has concluded previously that mobile telephony service providers with nationwide service areas can achieve certain economies of scale and increased efficiencies compared to operators with smaller service areas.

27. *Barriers to Entry.* One potential threat to the continued existence of meaningful economic competition in CMRS markets is the barrier to entry posed by the limited availability of spectrum. Ease of entry is an important factor when determining if firms in a given product and geographic market will be able to exercise market power. ''[E]ntry is * * * easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern.'' In particular, we note that antitrust authorities ''will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact.'' Unfettered market competition forces prices to the level of production costs. Markets function optimally only if one or more firms are able to enter a market or expand current production swiftly and effectively in response to the elevation of prices (or degradation of service) by one or more firms attempting to exercise market power. Therefore, in evaluating the state of the market the Commission considers whether barriers to entry exist and, if so, how pronounced these barriers to entry are, with the ultimate goal of determining whether potential entry would be timely, likely, and sufficient to discipline the market.

28. The requirement to obtain access to spectrum constitutes a barrier to facilities-based entry into the CMRS marketplace because the supply of suitable spectrum is limited. Facilities-based mobile telephony service cannot be offered without access to suitable spectrum, and a government license is required to use spectrum to provide CMRS. Some commenters argue that, because CMRS spectrum allocations have been made, this barrier to entry has been reduced. Other commenters, however, argue that it is typically difficult to acquire the spectrum necessary to enter a CMRS market. One

commenter, in particular, emphasizes that the finite amount of spectrum suitable for CMRS is an ''insurmountable barrier to entry.'' The Commission finds that the limited amount of spectrum suitable for CMRS available today creates a significant barrier to entry, at least in MSAs. Most of the spectrum currently subject to the cap either has been assigned or is being considered for assignment to the high bidder at auction. In most cases, the high bidder is either an existing market participant or its affiliate. Although some of this spectrum is currently unused or underused, the total pool of such spectrum is finite, and the amount that is not controlled by a provider that has launched service, particularly in MSAs, is small.

29. Some commenters argue that availability of spectrum is not a significant barrier to entry because other spectrum, not covered by the cap, is a viable substitute for the provision of mobile telephony services. Specifically, commenters identify spectrum allocated for Mobile Satellite Service (MSS), big Low Earth Orbit (LEO) satellite service, Multipoint Multichannel Distribution Service and Instructional Television Fixed Service (MDS/ITFS), Wireless Communications Service (WCS), and CMRS other than cellular, broadband PCS, and SMR, as well as spectrum that has been (or is soon likely to be) reallocated from television Channels 52–59 and 60–69. Much of this spectrum, however, either is not currently allocated for mobile terrestrial use, is subject to technical and use restrictions that prevent offering of full mobile telephony services, or has insufficient capacity to support significant mobile telephony competition. The Commission believes the spectrum bands that are most likely to support additional competition to the services offered over cellular, broadband PCS, and SMR spectrum in the reasonably near future are the 1.7 and 2.1 GHz bands that are being considered for mobile allocation in the Commission's so-called 3G proceeding, and the bands reallocated from television Channels 60–69. However, this spectrum is still at least several months away from being assigned, and after assignment it will take time for incumbent users to be relocated and following that for licensees to build out their networks. Thus, although the Commission expects that 3G and Channels 60–69 spectrum will offer some potential for near-term entry over the next few years, the availability of spectrum suitable for CMRS remains a barrier to entry in the near term.

30. Nonetheless, there are factors that moderate concern regarding the spectrum access barrier to entry. In particular, the need for direct access to spectrum is not absolute because carriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (MVNO) arrangement. However, it is not clear that these options have more than a limited role today. The transition period the Commission adopts today also helps to minimize the problem of spectrum access because, while future allocations do not respond to the needs of the marketplace today, the Commission expects that additional spectrum will be available at the end of the transition period, or shortly thereafter.

31. Although access to spectrum does not appear to be a substantial barrier to entry in RSAs, as in these areas there is typically a significant amount of unused spectrum, the other costs of serving high-cost and low-density areas may make it unlikely that competition in RSAs will increase to a level rivaling that of MSAs. Specifically, the cost of building out a network with pervasive coverage is likely to be higher in rural than in urban areas (especially for digital networks on 1.9 GHz PCS spectrum with lower power handsets), and revenue potential is lower. Thus, the potential revenue from initiating or expanding service in an RSA may not be sufficient to cover the costs of building out the network, including any opportunity costs associated with directing resources to rural buildout instead of enhancing the carrier's network in urban areas. In addition, it would likely be time-consuming for a new entrant to access sufficient capital, build out its network to a sufficient degree to effectively market its services, and attract a sufficient subscriber base to discipline the market. Although the Commission does not have sufficient record evidence to evaluate the likely development of the market in RSAs, the underlying economics appear to make it unlikely that competition in RSAs will evolve in the near term to rival that in MSAs.

32. *Other Issues.* Various commenters discuss the potential for CMRS providers to foreclose entry by anticompetitive warehousing of spectrum. Some commenters argue that it is unlikely that carriers have an incentive to warehouse spectrum because the cost of acquiring spectrum and meeting the Commission's buildout requirements is high. Other commenters, however, argue that CMRS providers have an incentive to warehouse spectrum either by purchasing more spectrum than can be used or by investing in inefficient technologies. Even if a carrier did not deliberately set out to foreclose competition, one commenter contends that the profits from doing so may be an attractive side effect of spectrum aggregation. The Commission does not have evidence that firms are currently holding excess spectrum in order to deter entry or that the benefits of excluding competitors would exceed the cost of acquiring spectrum and the free-rider problem of several incumbents benefiting from one incumbent's expenditure. However, it is at least a threshold possibility that because the supply of suitable spectrum is limited, firms in CMRS markets might choose to overinvest in spectrum in order to deter entry, depending on the costs of doing so.

33. One commenter also suggests that collusion among CMRS providers may warrant ongoing consideration. It notes that pricing plans for CMRS offerings are similar among the national carriers, and price comparisons of these plans can easily be performed, facilitating price coordination. Further, the commenter argues that experience in the marketplace shows carriers behaving in a largely oligopolistic fashion by offering largely identical products at prices far above their marginal costs. However, another commenter argues that anticompetitive collusion is unlikely in CMRS markets because these markets have well-capitalized actual and potential competitors, and demand is increasing. Further, according to this commenter, it is relatively easy for existing competitors to add capacity in response to any price increase, and therefore firms cannot profitably reduce output and sustain a high price for a significant period of time. Other commenters argue that the large number of competitors and the complexities of the various pricing plans make coordination unlikely. Although the record does not indicate that tacit collusion is occurring or is likely to occur, CMRS markets do meet many of the criteria that make tacit collusion sustainable. Moreover, tacit collusion becomes more likely as the number of competitors is reduced.

34. *Conclusion.* In light of all the factors discussed above, the Commission finds that there is meaningful economic competition in CMRS mobile telephony generally. Evidence in MSAs regarding the current state of these markets clearly shows that the presence of multiple competitors is effectively restraining prices, promoting innovation and diversity, and increasing output. Based on the information

available, competition in RSAs appears to be less robust than in MSAs. Finally, to the extent that competitive concerns are raised in a particular proposed assignment or transfer of control application, as discussed below, the Commission believes they can be addressed through means other than the spectrum cap.

C. Repeal and Interim Modification of the Spectrum Cap

35. Currently, the Commission evaluates the competitive effects of the acquisition of CMRS spectrum primarily through the general application of numerical thresholds such as the spectrum cap. The Commission could, however, fulfill its duties under section 310(d) and other statutory provisions through case-by-case review of individual transactions. In light of its finding of meaningful economic competition above, the Commission concludes that long-term retention of the spectrum cap rule is no longer necessary in the public interest, and it therefore moves to repeal that rule. At the same time, it concludes that it is necessary in the public interest to retain the rule for a limited transition period to allow the market to adjust and enable the Commission to consider guidelines for case-by-case review of CMRS spectrum aggregation transactions. Finally, during the transition period, the Commission modifies the rule by increasing the spectrum cap to 55 MHz in all areas.

1. Move From Prophylactic Rule to Case-by-Case Review

36. *Background*. With respect to the appropriate regulatory tool for reviewing potential effects on competition in CMRS markets, proponents of the current spectrum cap generally favor a bright-line approach, arguing that a bright line promotes regulatory certainty and significantly reduces the processing time of transfer and assignment applications. One proponent argues that determining how to apply the rule in a particular case is easier than gathering the information that transacting parties may be required to submit under a case-by-case approach, such as potentially sensitive customer and market share information. Generally, opponents of the current spectrum cap argue that case-by-case review is preferable to a prophylactic approach because the case-by-case approach is more flexible and reduces the possibility of blocking transactions that are actually in the public interest or, alternatively, permitting transactions that are not in the public interest.

37. *Discussion*. The Commission concludes that it is appropriate to move in the very near future from reliance on a prophylactic rule of general application to pure case-by-case review. In assessing the choice of an appropriate tool, the Commission recognizes that different costs and benefits can be associated with bright-line rules and case-by-case review with respect to degree of flexibility, predictability of outcome, likelihood of rejecting beneficial (or approving harmful) transactions, ability to account for the particular attributes of a transaction or market, speed of decision-making, and resource demands on the Commission and carriers.

38. On balance, and in light of the growth of both competition and consumer demand in CMRS markets, the Commission concludes that case-by-case review, accompanied by enforcement of sanctions in cases of misconduct, is now preferable to the spectrum cap rule because it gives the Commission flexibility to reach the appropriate decision in each case, on the basis of the particular circumstances of that case. The development of competition among CMRS carriers since the 1999 biennial review is an important factor underlying this conclusion. The Commission is persuaded that competition is now robust enough in CMRS markets that it is no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest. As discussed below, the Commission commits itself to increasing Commission resources available to review spectrum aggregation transactions and to considering appropriate guidelines for review of future transactions, in order to continue to provide parties with a reasonable degree of certainty and transparency as well as to minimize the administrative costs of case-by-case review.

39. The Commission does not agree with commenters who suggest that the spectrum cap rule should be retained to promote technologically efficient use of spectrum. As discussed above, the Commission's purpose in adopting the spectrum cap was to promote competition in CMRS markets. The Commission is not persuaded that it is in the public interest to interfere with the competitive market's creation of incentives regarding choice of technology. Similarly, the Commission does not agree with commenters who argue that the spectrum cap rule should be retained to further opportunities for resale or roaming arrangements. The Commission's case-by-case review will allow it the flexibility to consider any such concerns raised with respect to specific applications.

40. The Commission also is not persuaded by arguments that the spectrum cap rule should be retained to preserve opportunities for entrepreneurs and providers of niche services. As other commenters point out, the spectrum cap rule does nothing in and of itself to create opportunities for entrepreneurs, and may actually harm small businesses by limiting their access to existing carriers as sources of capital and management expertise. Furthermore, to the extent the spectrum cap does create some potential opportunities for entrepreneurs, the Commission finds this benefit is insufficient to outweigh the benefits of moving away from a bright-line rule approach, particularly in light of the other tools it has to help preserve opportunities for small businesses—its ability to carry out case-by-case review of transactions and its ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. Moreover, the Commission intends to take into account the special needs of small businesses as it considers processing guidelines, and the Commission believes that individualized review will benefit small businesses as well as large.

41. Finally, the Commission notes the arguments of several parties that, if it eliminates or increases the spectrum cap, it should take certain other actions to ensure competition in all segments of the CMRS marketplace. The merits of these proposals are beyond the scope of this proceeding, irrespective of the Commission's decisions today with regard to the spectrum cap; however, the Commission notes that a flexible case-by-case approach will allow it to consider specific circumstances and impacts of individual applications.

2. Case-by-Case Review

42. The public policy objectives that the Commission first articulated in 1994 with respect to review of CMRS spectrum acquisitions remain applicable today. The spectrum cap rule was originally designed to ''discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency.'' The Commission has also stated that the spectrum cap promotes competition in CMRS markets, allows efficient administration of CMRS spectrum acquisitions, and provides regulatory certainty to the marketplace. Although the Commission decides today that the spectrum cap rule is no longer necessary in the public interest, it must still

achieve the objectives that the spectrum cap was intended to promote. The Commission believes that these objectives can now be better achieved in the context of secondary market transactions through case-by-case review, properly performed. Furthermore, to the extent that the initial distribution of spectrum through auction is an issue in the future, that is also amenable to case-by-case review, in the sense that the Commission can shape the initial distribution through the service rules adopted with respect to specific auctions.

43. With or without the spectrum cap rule, the Commission has an obligation to ensure that acquisitions of CMRS spectrum do not have anticompetitive effects that render them contrary to the public interest. Specifically, section 310(d) of the Communications Act requires the Commission not to approve any transfer, assignment, or disposal of a license, or attendant rights unless it finds that the public interest, convenience, and necessity will be served thereby. Moreover, although strong competitive forces are evident in today's CMRS industry, the Commission recognizes the possibility that significant additional consolidation of control over spectrum could have serious anticompetitive effects. Thus, the Commission intends to perform case-by-case review of CMRS spectrum aggregation transactions in order to fulfill its statutory mandates to promote competition, ensure diversity of license holdings, and manage the spectrum in the public interest. 47 U.S.C. 301, 303, 309(j), 310(d). The Commission determines that, in order to ensure that this review is performed in a manner that serves the public interest, it is necessary to retain the spectrum cap rule until January 1, 2003, to enable the Commission and the market to prepare for case-by-case review, including the Commission's consideration of processing and/or substantive guidelines for this process.

44. *Performing Case-by-Case Review*. Although, the Commission determines that long-term retention of the spectrum cap rule is no longer necessary to serve the procompetitive purposes for which it was adopted, it recognizes that application of this prophylactic rule has conferred certain advantages. In particular, the spectrum cap rule has provided parties with guidance regarding what transactions the Commission would likely consider to be in the public interest, enabled parties to structure their transactions to fall within the rule, and provided processing guidance for Commission staff. From August 2000 to August 2001, the Wireless Telecommunications Bureau disposed of assignments and transfers of control involving approximately 1,305 licenses (other than pro forma applications) currently covered by the CMRS spectrum cap. The overwhelming majority of these transfers and assignments were processed within ninety days.

45. If it were to repeal the spectrum cap immediately, without anything further, the Commission would have neither objective guidelines nor a body of precedent to guide the review process. Therefore, the Commission would run the risks both that its review would fail to produce accurate and consistent results, and that, without benefit of either objective standards or directly applicable precedent, applications would not be decided on a timely basis. To perform meaningful and timely review of spectrum aggregation transactions without the spectrum cap, the Commission may need to develop effective guidelines for this process, as well as ensure that sufficient resources are devoted to the task. One commenter emphasized the importance of regulatory certainty and speed of review to enable them to plan efficiently, invest with confidence, and reassure providers of capital. A transition period is necessary so that the Commission can continue to meet these needs.

46. As it develops the contours of its case-by-case regime during the transition period, the Commission will consider what form of guidelines might best balance the virtues of certainty and flexibility in this review process. For example, procedural guidelines could specify timing benchmarks and the types of information that applicants will be expected to provide. It may also be useful to applicants and Commission staff to identify substantive factors and benchmarks that would make the Commission more or less likely to take a closer look at a proposed transaction. For example, some of these factors could track those in the *DOJ/FTC Merger Guidelines*, such as measures of concentration in a market. One commenter argues that, to the extent the Commission develops internal processing guidelines for evaluating wireless transactions, ''it should look to the same criteria used by [DOJ] in its antitrust analysis—the Merger Guidelines, and rely on the kind of information and methodologies utilized by DOJ in conducting its competition analyses.'' The Commission also will consider the most appropriate process for developing potential guidelines, including whether notice and comment procedures are necessary or helpful. The Commission emphasizes, however, that it does not intend to adopt guidelines to reinstate a bright-line rule.

47. *Relationship of Commission's and DOJ's Processes*. With respect to competitive issues, applicants may currently be required to satisfy both the Commission's review process and that of DOJ. (DOJ investigates proposed mergers and acquisitions to determine whether they may substantially affect competition under sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. 1–2) and section 7 of the Clayton Act (15 U.S.C. 18)). In the *NPRM*, the Commission asked whether, and under what circumstances, in its review of transfer/assignment applications it should defer to DOJ's review of competitive issues in a transaction. A number of parties, generally those that favor retaining the spectrum cap, argue that the Commission cannot leave all competitive review of CMRS markets to DOJ. One commenter argues that the Commission bears a special responsibility under the Communications Act for CMRS markets, different from the antitrust authority of DOJ under the antitrust statutes. Unlike DOJ or FTC, the commenter asserts, the Commission is under explicit statutory mandates to promote economic opportunity; avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants; foster rapid deployment of new technologies, products, and services that benefit the public; and promote the efficient use of the spectrum. Further, the commenter argues that the Communications Act obligates the Commission to promote competition, while DOJ is authorized only to stop proposed transactions that would substantially lessen competition. Therefore, the commenter argues, the Commission has an independent role in competitive review and is not duplicating the work of the antitrust agencies by performing competitive analysis.

48. Another commenter argues that the Commission has authority to prevent certain anticompetitive acquisitions that DOJ does not, such as the acquisition of licenses at auction, license swaps, and spectrum leases. Further, the commenter argues that the Commission has an independent responsibility to review competitive effects of transactions because DOJ's review standard does not encompass overall public interest considerations. Another commenter argues that the Commission should continue to analyze the competitive effects of license transfers and assignments because many transactions fall below the reporting

threshold of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR) (15 U.S.C. 18(a)) and, in light of the recent increase in these thresholds, fewer transactions are now reportable than before. Pursuant to 15 U.S.C. 18(a), premerger notification is required if a transaction meets either of two thresholds: (1) one of the parties to the transaction has annual sales or assets of more than $100 million and the other party $10 million, and as a result of the acquisition, the acquiring person will hold voting securities or assets worth in the aggregate more than $50 million; or (2) the total value of the transaction exceeds $200 million. Further, the commenter argues that DOJ has limited resources, resulting in review of only a subset of the transactions reported under HSR and virtually none of the transactions that need not be reported.

49. Some parties that favor eliminating the spectrum cap argue that the Commission's competitive analysis duplicates review by DOJ and, therefore, is unnecessary and creates delay and uncertainty. These parties generally believe that the Commission should review transfers and assignments only pursuant to specific obligations imposed by the Communications Act, e.g., the public interest standard of section 310(d) and for compliance with Commission rules, and that competitive review of CMRS transactions should be performed exclusively by the antitrust agencies. Another commenter argues that DOJ is better equipped than the Commission to investigate competitive harm, but that section 310(d) of the Communications Act provides the means for the Commission also to investigate competitive issues as a supplement to DOJ's responsibilities.

50. *Discussion.* The Commission finds that, under the statutory regime set out by Congress, the Commission has an obligation, distinct from that of DOJ, to consider as part of the Commission's public interest review the anticompetitive effects of acquisitions of CMRS spectrum, including those that occur in the secondary market. The U.S. Court of Appeals for the District of Columbia Circuit has found that the Commission must consider antitrust and competition effects in making its public interest determinations under the Communications Act. *United States* v. *FCC* (652 F.2d 72 (D.C. Cir. 1980)).

51. Further, the Commission's independent statutory obligations in this area are sufficiently different from those of DOJ that it would be difficult for the Commission to fulfill them were it to defer generally to competitive assessments made by DOJ. For example, the Commission's unique spectrum management responsibilities, including those under 47 U.S.C. 151, 301, 303, and 309(j), are affected by the level of competition that exists in CMRS markets. In addition, while the Commission has never chosen to exercise it, the Commission has independent authority under sections 7 and 11 of Clayton Act (15 U.S.C. 18, 21(a)) to disapprove the acquisition of common carriers engaged in wire or radio communications or radio transmissions of energy in any line of commerce in any section of the country where the effects of such an acquisition may substantially lessen competition, or tend to create a monopoly.

52. There are also significant differences between the two agencies' procedural responsibilities. Unlike DOJ, the Commission has an independent statutory obligation to make a public interest determination that is judicially reviewable, on the record, pursuant to the APA, with regard to all applications for transfer or assignment of licenses. By contrast, DOJ does not review all CMRS-related transactions, is permitted to exercise prosecutorial discretion in choosing which cases to pursue, and is not required to state the reasons that underlie its decision to abandon individual cases. Were the Commission to defer all competitive review to DOJ, it would sometimes be compelled to defer to DOJ's silence on particular matters, providing no basis for judicial review.

53. It may, however, be appropriate for the Commission to rely, at least in part, on DOJ's analysis in certain cases where DOJ has fully examined the competitive effects of a particular acquisition and determined its effect on the relevant market(s)—for example, cases where DOJ and the transacting parties have entered into a Consent Decree. The Commission intends during its transition period to case-by-case review to explore appropriate circumstances in which it might either rely on DOJ's conclusions or engage in greater coordination with DOJ with respect to these issues so as to minimize duplication of effort between the agencies, process applications as efficiently as possible, and minimize the burden on applicants for Commission approval of transfers and assignments.

54. *Transition Period.* The Commission concludes that a transition period, pursuant to which a modified spectrum cap will remain in effect until January 1, 2003, is in the public interest so that applicants and the Commission can prepare for case-by-case review of all transactions. In addition to giving the Commission the opportunity to consider guidelines, a transition period will also help carriers prepare for the additional burdens that case-by-case review could impose on their resources. In particular, the Commission believes this preparation may be especially important for small businesses. While the Commission believes that opportunities for small businesses can be fully protected through a case-by-case approach, the Commission recognizes that advancing one's positions in a case-by-case regime could require the preparation of more detailed applications, which could require resources that small businesses may not be immediately prepared to commit. In addition, regulatory certainty and speed of processing are likely to be particularly important to small businesses, which typically are less able to withstand extended or costly administrative processes. This demand for resources would be especially great if the Commission were to change immediately to a case-by-case process without first considering effective standards and procedures. The Commission intends to take the special needs of small businesses into account in considering its guidelines for the review of CMRS spectrum acquisitions.

55. At the same time, the Commission finds that in the interim, continued application of the spectrum cap, modified as discussed below, will not result in significant distortions in the market or delay in the introduction of beneficial services. In fact, in only relatively few instances is any party at the spectrum cap. (In the fifty most populous MSAs, Commission records indicate that in only four instances is a carrier currently at the spectrum cap, and in a survey of eighty sample RSAs the Commission found only seven instances of a party reaching the cap.) The Commission believes increasing the spectrum cap to 55 MHz will provide a meaningful margin to relieve capacity constraints that some carriers may face now or are likely to encounter within the next fourteen months. Thus, the Commission will generally presume that transactions complying with the 55 MHz spectrum cap will not cause undue risk of market concentration. At the same time, while it anticipates that most transactions that are within the cap will not raise competitive concerns, the Commission retains the discretion to review the competitive effects of transactions that are within the spectrum cap if an interested party provides specific evidence that such a transaction will create an undue risk of market concentration, or if the Commission staff independently finds

such evidence. In any instance in which permitting a carrier to exceed 55 MHz would be in the public interest due to capacity constraints or otherwise, the waiver process remains available.

56. The Commission concludes that sunsetting the cap on January 1, 2003, will provide a sufficient period of time for the Commission and industry to prepare for reliance solely on case-by-case review of CMRS spectrum aggregation transactions. Moreover, two blocks of spectrum that will be usable for CMRS are likely to be allocated and assigned within this approximate timeframe or soon thereafter. First, the Commission currently has pending a proceeding in which it has proposed to allocate additional spectrum for the provision of 3G and other advanced services. *3G Notice of Proposed Rulemaking* (66 FR 7483, January 23, 2001), *3G Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (''*M&O*'') (66 FR 47591, September 13, 2001) and (''*FNPRM*'') (66 FR 47618, September 13, 2001), *3G First Report and Order and Memorandum Opinion and Order* (''*First R&O*'') (66 FR 53960, October 25, 2001) and (''*MO&O*'') (66 FR 53973, October 25, 2001). Second, 30 MHz of spectrum being vacated by television Channels 60–69 is scheduled to be auctioned beginning June 19, 2002. Accordingly, the spectrum cap rule will cease to be effective on January 1, 2003. The Commission believes that setting a date certain for repeal of this rule provides stability to the market, and that this period gives all parties sufficient time to prepare for the change.

3. Modification to the Spectrum Cap During the Transition Period

57. Having determined that the CMRS spectrum cap should be eliminated, but that a transition period is necessary before it switches to a pure case-by-case approach to analyzing CMRS assignments and transfers of control, the Commission next considers whether to make changes to the existing rule during the transition period. The Commission concludes that an increase in the spectrum cap to 55 MHz in MSAs is appropriate at this time. This modification will provide carriers in MSAs some additional freedom to acquire spectrum during the transition at relatively minimal competitive risk. The Commission also concludes that because the spectrum cap in RSAs is already at 55 MHz, no modification in RSAs is appropriate during the sunset period.

a. MSAs: 58. The current CMRS spectrum cap restricts parties to attributable interests in 45 MHz of covered spectrum in MSAs. In the *NPRM*, the Commission requested comment on whether this threshold should be modified. The Commission first addresses the efficiency effects of the rule and then addresses the competitive effects.

59. *Efficiency Effects of the Spectrum Cap.* Advocates of raising the spectrum cap generally make two types of efficiency arguments. The first is a long-run argument that the 45 MHz ceiling prevents service providers from achieving minimum efficient scale, *i.e.,* that level of output at which long-run average costs reach a minimum. This means that non-trivial economies of scale are going unrealized. The second argument is that in the short run under the current ceilings, the quantity of service demanded exceeds, or will soon exceed, the quantity that firms can supply efficiently. That is, demand for service is, or will be, such that firms will be forced either not to offer certain services at all, or to distort their input choices in order to satisfy demand. This input distortion, for example, might consist of over-investing in cell-splitting and smart antennas because additional spectrum input cannot be acquired.

60. The Commission agrees that both the short-run and long-run efficiency problems, to the extent they are present, would constitute harms imposed by the current rule, and easing them would be a benefit of raising the CMRS cap. Based on the specific information and data in the record, however, the Commission finds that most providers are not constrained today by the current cap in most markets, and that it is unlikely that total demand for voice and data services will grow so rapidly over the next year or two that capacity constraints will become a serious, across-the-board problem during that time. The Commission also believes that less than 45 MHz is required to achieve minimum efficient scale in the provision of service today.

61. The Commission does agree, however, that it may be the case that some carriers are capacity-constrained in certain urban markets with high population density. And the Commission agrees that it is possible—if not likely—that demand for voice and data services will grow so rapidly over the next fourteen months that the current 45 MHz cap would cause significant efficiency costs. Such costs, of course, while initially imposed on the operators, would eventually be passed on at least in part to consumers of mobile telephony services in the form of higher prices, poorer service, or lack of innovation. An increase in the cap to 55 MHz, where it is now for rural areas, can help to prevent such potential efficiency losses.

62. *Competitive Effects of Relaxing the Spectrum Cap.* There are several reasons that an increase in the cap in MSAs to 55 MHz does not pose undue risk of anticompetitive consequences during the transition period, but that any greater increase would run an unacceptable risk of significantly reducing competition. First, a 10 MHz increase in the cap means that, as with the 45 MHz cap, there must in principle be at least four competitors in each geographic market. While the current cap permits four competitors with equal (45 MHz) spectrum holdings, the 55 MHz cap will permit three firms holding 55 MHz and a fourth holding 15 MHz. Although a firm with 15 MHz may be capacity-constrained in some geographic areas, it will often be able to help discipline its larger competitors. Second, the Commission notes that raising the cap to 55 MHz increases the maximum possible input-based HHI by only 350 points, from 2,500 to 2,850. While not insignificant, this increase appears unlikely to foster unilateral pricing power in the current marketplace. Third, mobile telephony operators typically experience high fixed costs and low marginal costs of production. Low marginal costs mean that producers can potentially achieve high profits by reducing their prices, and therefore can render tacit agreements to charge high prices difficult to sustain.

63. The Commission also notes that, as is the case today, it reserves the right to subject transactions involving significant geographic overlap but resulting in consolidation below the new ceiling to further scrutiny. There may be circumstances under which a transfer or assignment could raise competitive concerns notwithstanding compliance with the spectrum cap, for example, elimination of significant actual competition. The Commission will generally presume that transactions complying with the 55 MHz cap do not cause undue risk of market concentration unless specific evidence to the contrary is presented by either interested parties or through review by Commission staff.

64. Furthermore, any concern about the possible competitive impact of moderately increased concentration is also materially reduced by the possibility of additional allocations of spectrum over the next two years that will greatly increase the amount of spectrum available for CMRS applications. In particular, the Commission's Advanced Wireless Services proceeding is considering

options for substantial new allocations of spectrum for terrestrial, fixed, and mobile services. These options include the 1710–1755 MHz band, which has already been transferred from federal government use, and the 2110–2150, 2160–2165 MHz Emerging Technologies band. Licensing of these bands is likely within the next two years. Clearance of incumbent users in each case is unlikely to be difficult, since they are primarily fixed operators and thus multiple options for relocation are available. Although provision of service on these bands is not imminent, the Commission believes this quantity of spectrum and the relative certainty that it will become available shortly after the end of the transition period should meaningfully discourage anticompetitive behavior during the period.

65. *Balancing of Efficiency and Competitive Effects of the Spectrum Cap*. On balance, the Commission finds that it should increase the CMRS spectrum cap to 55 MHz in MSAs. The potential harm from increasing the cap to 55 MHz appears to be outweighed by the corresponding potential benefits, which include facilitating improved operations, network design, and innovation. The Commission believes any increase of less than 10 MHz might not provide significant relief to firms that may be capacity-constrained, because there may be indivisibilities in the secondary market for spectrum that make acquisition in increments smaller than 10 MHz unlikely. (For example, carriers at 40 MHz may in effect be constrained by the 45 MHz cap because they can acquire, at most, 5 MHz of additional spectrum and such a small block of spectrum may not be available.) Regarding the effect of mergers or acquisitions up to the new cap, the Commission notes that many of these may not be acquisitions of ongoing businesses, but rather of bare licenses or licenses with only certain physical assets. In the 50 largest MSAs, for example, there is an average of roughly 40 MHz of unlaunched spectrum licenses. In the ten largest MSAs, there is an average of roughly 30 MHz. Consolidation of this unused spectrum into an existing business would not reduce actual competition, although it might have an effect on potential competition.

66. If a firm is capacity-constrained even at the 55 MHz limit, it may submit a waiver request. We find that waivers provide a reasonable solution for carriers that may need spectrum above the relaxed spectrum aggregation limit during the period until the rule sunsets. Therefore, to the extent that a carrier can demonstrate that in a particular geographic area the spectrum cap is currently having a significant adverse effect on its ability to provide CMRS, the Commission will consider granting a waiver of the cap for that geographic area. We urge carriers requesting waivers to clearly identify what additional services they would provide if the spectrum cap rule were waived, and why such services cannot be provided without exceeding the cap. In evaluating a waiver request, the Commission will also take into account any potential adverse effects of granting the waiver, such as diminution of competition, as well as the potential benefits from the provision of additional services.

*b. RSAs:*67. CMRS markets in rural areas are significantly different from the markets in urban areas. In particular, RSAs typically have many fewer competitors offering two-way mobile service, and many fewer nationwide service providers, than do MSAs. Indeed, in seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. In the *First Biennial Review Order*, the Commission increased the spectrum cap to 55 MHz in RSAs on the ground that allowing rural cellular and broadband PCS carriers to form partnerships in certain overlapping areas would allow these carriers to achieve economies of scope that might facilitate deployment, while entailing little opportunity cost because the economics of serving rural areas made it unlikely that a large number of independent competitors would emerge in any event. In the *NPRM*, the Commission asked whether, in light of the continued lagging development of competition in rural areas, it should consider further changes to the spectrum aggregation limits in these markets. In particular, the Commission asked commenters to describe any benefits to rural customers that had accrued from the previous increase in the spectrum cap in terms of lower prices, availability of digital services, or otherwise.

68. Some commenters argue that the spectrum cap inhibits competition in rural areas due to the high cost of providing service across large geographic areas, and that the most cost-effective means of bringing broadband PCS and SMR services to rural subscribers is to provide existing rural cellular providers the ability to acquire additional spectrum to offer such services. Another commenter, on the other hand, argues that removal of the spectrum cap in rural markets is likely to reduce competition and increase costs of mobile wireless service in those areas, given the smaller number of competitors in rural areas. Others argue that spectrum in rural areas is currently going unused, and that if the spectrum cap and cellular cross-interest rules are eliminated, the Commission should take other actions to ensure that small rural companies have the ability to obtain spectrum and that consumers in rural areas have access to advanced services.

69. Based on the record before it, the Commission concludes that, given the market conditions prevailing in rural areas during the transition period, 55 MHz remains the appropriate level for the spectrum cap in these areas until the cap is eliminated in favor of case-by-case review. Given the smaller population and demand for service in RSAs, it is highly unlikely that the current spectrum cap is causing any capacity constraint or similar inefficiency. The Commission therefore concludes that during the sunset period it should continue to keep the spectrum cap at 55 MHz in RSAs.

D. Partial Repeal of the Cellular Cross-Interest Rule

70. In the *NPRM*, the Commission sought comment on the possible repeal of the cellular cross-interest rule. Alternatively, it asked whether the rule could be modified so that it would not apply in certain circumstances in which other regulations would provide adequate safeguards. The Commission suggested the possibility of continuing to apply the rule only in markets where there are a limited number of competitors to the existing cellular providers. Accordingly, the Commission sought comment on whether there was a need to maintain any cellular-specific restrictions in more urban areas, where there are generally a larger number of competitive choices for consumers. While noting that cellular providers maintained large market shares in MSAs, the Commission asked whether cellular/cellular combinations remain more anticompetitive than cellular/PCS or PCS/PCS combinations in MSAs. Commenters were asked to provide empirical evidence and/or studies on the relative competitive and buildout status of cellular, SMR, and broadband PCS carriers on a market-by-market as well as comprehensive basis.

71. The majority of commenters who address the issue recommend elimination of the cellular cross-interest rule, particularly in MSAs. Some argue that the rule should be eliminated in its entirety. These commenters argue that the rule is unnecessary, outdated, and inequitable, noting that PCS licensees are not subject to a similar rule.

Moreover, they argue that meaningful competition now exists and the rule is not necessary to prevent harmful consolidation. Another commenter argues that, if the spectrum cap rule is retained, the cellular cross-interest rule should be eliminated in MSAs, though retained in RSAs, because in most MSAs, consumers have numerous choices. One commenter argues that the cross-interest rule remains a valuable competitive safeguard, particularly because there are still cellular markets in rural areas in which no broadband PCS provider has initiated service. Others argue that in the event that the spectrum cap or cellular cross-interest rules are modified or eliminated, the Commission must take other actions to ensure opportunities for small businesses and provision of service to underserved areas.

1. Elimination of Cellular Cross-Interest Restriction in MSAs

72. The Commission concludes that the cellular cross-interest rule is no longer necessary in urban markets, given the presence of numerous competitive choices for consumers in such markets. The Commission therefore repeals the rule in MSAs in order to provide relief from capacity constraints and in recognition of the fact that the cellular incumbents in MSAs no longer enjoy significant first-mover advantages. Unlike the case of the spectrum cap, the Commission finds that no transition period is necessary to eliminate the cellular cross-interest restriction in MSAs.

73. In the *First Biennial Review Order*, the Commission concluded that the cellular cross-interest rule was still necessary, given the strong market position held by the two cellular carriers in virtually all markets. The two cellular carriers held the vast majority of subscribers in all markets and were the only providers of mobile telephony service in many markets. The Commission therefore found that the rule was still needed to prevent these incumbents from merging or having significant cross-ownership interests. The Commission recognized, however, that the cellular carriers' relative market position was diminishing in certain markets as broadband PCS and digital SMR service providers attracted more subscribers and began service in more areas of the country, particularly urban markets. The Commission then noted that it would reassess the need for a separate cellular cross-interest rule as part of its year 2000 biennial review, by which time it expected that the market positions of the two cellular carriers and broadband PCS and digital SMR service providers would have narrowed further.

74. The Commission finds today that cellular carriers no longer possess market power in MSAs, and that the services offered by cellular and broadband PCS providers in these markets are indistinguishable to consumers. In MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers that are offering service in some part of the county. Forty of the fifty most populous MSAs have six nationwide carriers, counting Nextel, with the remaining ten MSAs having five nationwide carriers. The significant drop in HHI calculations based on estimated subscribers in the top twenty-five MSAs from January 1999 to January 2001 is further indication that any market power that cellular carriers may have been able to exercise in the past has diminished in these urban markets. Moreover, the cellular providers' share of mobile telephony nationwide had declined to seventy percent by the end of 2000. In addition, most cellular carriers in MSAs have deployed digital technology extensively throughout their networks, and from a customer's perspective, digital service in the cellular band is virtually identical to digital service in the PCS band.

75. Accordingly, the Commission finds no reason to view the combination of cellular licensees in these markets less favorably than combinations of other CMRS licensees. Moreover, because the Commission finds that combinations of cellular carriers in MSAs are not presumptively anticompetitive today, and because restrictions on such combinations may be contributing to capacity constraints, it would be inappropriate to continue applying this rule on a transitional basis.

2. Retention of Cellular Cross-Interest Restriction in RSAs

76. The Commission concludes, however, based on the record before it, that it would not be appropriate at this time to eliminate the cellular cross-interest rule in rural markets. The Commision therefore retains the rule in RSAs, subject to waiver of the prohibition where it is shown that the proposed cross-interest would not create a significant likelihood of substantial competitive harm. The Commission will, however, reassess the need for a cellular cross-interest restriction in RSAs as part of its next biennial review in 2002, by which time the Commission may have more comprehensive information regarding the state of competition in rural markets.

77. CMRS markets in rural areas are different from the markets in urban areas, in that, generally, the cellular providers seem to enjoy first-mover advantages and to dominate the marketplace. In seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. Indeed, fifty-six percent of RSA counties have two or fewer facilities-based providers of mobile telephony offering service, presumably in most instances the two cellular licensees. In addition, it is the Commission's understanding that, in some areas, any competitors to the cellular incumbents are serving only a small portion of the county, particularly in the western United States, where many states have large rural counties. It is also significant that cellular carriers still control 70 percent of mobile telephony markets nationwide as of year-end 2000, and this share is likely to be smaller in MSAs and larger in RSAs. In the absence of a record to the contrary, these facts suggest that the cellular carriers generally dominate the rural markets. Moreover, due to the economics of serving rural areas, potential entry by new competitors is likely to be difficult. Thus, based on the record in this proceeding, it appears that a combination of interests in cellular licensees in rural areas would more likely result in a significant reduction in competition. In this regard, the Commission notes that unlike the spectrum cap rule, the cellular cross-interest rule addresses not the aggregation of spectrum, but the competitive position of the two cellular licensees. Without more comprehensive information in the record, however, the Commission is unable to conclude that repeal of the cellular cross-interest rule in RSAs is appropriate at this time.

78. In addition, the cellular cross-interest rule in RSAs is well tailored to the harm that it seeks to prevent. Because the rule places cellular carriers in RSAs under no special constraints in obtaining PCS spectrum, and in most RSAs there is ample unused PCS spectrum available, the rule does not prevent cellular carriers from increasing their capacity or offering advanced services. The ability of cellular carriers in rural areas to obtain PCS spectrum may provide an additional opportunity to consumers in RSAs to have access to the same advanced services offered to consumers in MSAs. The Commission therefore concludes that it should continue to forbid a cellular licensee in an RSA from holding an attributable interest in the cellular licensee on the

other channel block in an overlapping CGSA. To the extent that it can be shown that an RSA exhibits market conditions under which a specific cellular cross-interest would not create a significant likelihood of substantial competitive harm, such a situation can be addressed through waiver of the cross-interest prohibition.

79. Further, the Commission rejects one commenter's arguments that the benchmark for attributable ownership interests under the cellular cross-interest rule should be increased from five to 20 percent, as under the spectrum cap rule, and that the Commission should include a provision for waiver in the case of a passive minority investor in a licensee that has a single majority shareholder. The commenter, which supports retention of the spectrum cap and the cellular cross-interest rule (in both MSAs and RSAs), argues that because of the evolution of mobile telephony since the inception of the cellular cross-interest rule, there currently may be situations in which attributable ownership interests of greater than five percent would pose ''no actual threat to competition.'' In the *First Biennial Review Order*, the Commission found that given the continued dominance of the cellular incumbents in CMRS markets, allowing a party with a controlling interest in one cellular licensee to hold up to twenty percent ownership of the other licensee in the same market would pose a substantial threat to competition. Specifically, significant cross-interests between the two largest service providers in RSAs generally would create a significant incentive for the two not to compete with one another as vigorously as otherwise. For the reasons discussed above, the Commission concludes that market conditions in RSAs have not changed sufficiently to generally permit such cross-holdings of cellular interests today. The Commission will, however, entertain requests for waiver in appropriate circumstances. Thus, it declines to make the above-suggested revisions to the cellular cross-interest rule.

80. In the *NPRM*, the Commission sought comment on whether the cellular cross-interest rule should be modified to account for the possible disaggregation of cellular spectrum. For example, it asked whether the cellular cross-interest rule should be replaced by a cellular spectrum cap of 35 MHz so as to permit combination of a 25 MHz cellular license with up to 10 MHz of cellular spectrum on the other channel block in the same geographic area. The Commission did not receive any comment on this issue. In light of the absence of comment to guide it deliberations, and in light of the lack of applications for disaggregation of cellular spectrum, the Commission declines to modify the rule at this time. Given the lack of record evidence regarding this issue, the Commission believes it is more appropriate at this time to address any such requests on a case-by-case basis.

E. Clarification and Streamlining of Divestiture Provisions

81. The current spectrum cap and cellular cross-interest rules impose different time frames for divestiture of interests. The cellular cross-interest rule requires that a divestiture transaction be consummated prior to consummating the transaction that gives rise to the need to divest. The spectrum cap rule, however, considers parties to be in compliance with the divestiture provisions if, prior to consummating the primary transaction, an application is filed to transfer control of or assign any interest that would conflict with the rule. Based on its experience over the past two years, particularly in reviewing applications that combined cellular and PCS divestitures in one transaction, the Commission believes that the required timing of divestiture under these two rules should be harmonized.

82. Rather than tighten the divestiture provision in § 20.6, the Commission concludes that the better approach is to afford parties more leeway in the timing of divestiture transactions by revising § 22.942 of its rules to permit a transaction that causes a conflict with this rule to close as long as an application (or other request for Commission approval) has been filed that, if granted and the transaction is consummated, would remove the conflict. In choosing this more lenient course, however, the Commission notes that there may be circumstances in which a party that must divest an interest to comply with the spectrum cap and/or cellular cross-interest restriction should not be allowed a full 180 days to consummate a divestiture transaction. Divestiture transactions, by definition, occur to relieve potential anti-competitive effects of additional concentration. Therefore, because of specific competitive consequences of individual transactions, the Commission may decide on a case-by-case basis that it would serve the public interest to shorten the consummation and notification period to minimize the amount of time that such overlap occurs.

83. The Commission also takes this opportunity to clarify certain issues with respect to placing licenses (or interests in licenses) into a divestiture trust. As a preliminary matter, the Commission will revise § 22.942 of its rules to state explicitly that divestiture of licenses or interests pursuant to this rule is permitted via divestiture trust. In the *First Biennial Review Order,* the Commission stated that a licensee may divest to a trust if the trust will be of limited duration (six months or less) and the terms of the trust are approved by the Commission prior to the transfer of the assets to the trust. Further, the Commission stated that: (1) The divesting party must not have any interest in or control of the trustee; (2) the trust agreement must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities; and (3) the trustee must have the authority to dispose of the license(s) as he or she sees fit.

84. Based on its experience over the past two years reviewing such trust arrangements, the Commission believes that certain clarifications are appropriate to its policy on divestiture trusts. First, with respect to communications between the trustee and the beneficiary (*i.e.,* the divesting party), the Commission recognizes that the nature of communication required between the trustee and the beneficiary will differ depending on the nature of the trust property. For example, if the trust property is merely equity in a licensee that the beneficiary formerly held, very little communication between the trustee and the beneficiary will be necessary. If, however, the trustee is holding an entire business and managing operations, the beneficiary must have the freedom, and the responsibility, to respond to inquiries from the trustee, but must not be given additional knowledge about the operations of the divested property that could be used to influence the operations that the beneficiary retained in the affected market(s). Second, to enable the Commission to keep track of the progress toward ultimate divestiture, the Commission clarifies that its policy is to require, in individual transactions, trustees to report to the Commission every sixty days on the status of attempts to transfer the trust property to a third party. Third, the Commission clarifies that material revisions to an approved trust agreement that relate to the types of provisions it has identified herein or in the *First Biennial Review Order* require prior Commission approval. Fourth, the Commission clarifies that, in the case of an approved divestiture trust, the trust property will be attributed during the period held in

trust to the trustee, and because of the protections that are required of such trusts, not to the beneficiary.

Final Regulatory Flexibility Analysis

85. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the R&O

86. In the *NPRM* in this proceeding, as part of its biennial regulatory review pursuant to section 11 of the Communications Act, the Commission solicited comment on whether it should retain, modify, or eliminate the CMRS spectrum cap and the cellular cross-interest rule. In asking these questions, the *NPRM* looked at recent competitive changes in CMRS markets, reexamined the public interest objectives that the spectrum aggregation limits were designed to achieve, and asked whether there were alternatives to the existing rules that would avoid any potential public interest costs.

87. This *R&O* concludes that the CMRS spectrum cap is no longer necessary in the public interest as the result of meaningful economic competition in CMRS markets. Accordingly, the Commission provides for the elimination or ''sunset'' of the spectrum cap rule effective January 1, 2003. The Commission will no longer rely on this prophylactic rule in its approach to the aggregation of CMRS spectrum, but instead it will examine spectrum aggregation on a case-by-case basis, along with enforcement of safeguards in cases of misconduct. During the transition period, the Commission will consider substantive and processing guidelines to guide its case-by-case review of transactions that would raise concerns similar to those that the spectrum cap was designed to address. The Commission further decides, on the basis of the current state of competition in CMRS markets, to raise the spectrum cap to 55 MHz in all markets during the transition period. The Commission believes that this change should address certain carriers' concerns about near term capacity constraints in the most constrained urban areas during the period until the rule is eliminated and reliance solely on case-by-case review of CMRS spectrum aggregation is initiated, while not posing an undue risk of anti-competitive consequences during the transition period.

88. The Commission also eliminates the cellular cross-interest rule in MSAs without a transition period, in recognition that the cellular carriers in these areas no longer enjoy significant first-mover advantages. However, based on the current record, the Commission retains the cellular cross-interest rule in RSAs, where it appears that the cellular incumbents continue generally to dominate the market. The Commission will reassess the continued need for the cellular cross-interest rule in RSAs during the 2002 biennial review.

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

89. The Office of Advocacy of the U.S. Small Business Administration (SBA) and the National Telephone Cooperative Association (NTCA) filed comments in response to the IRFA. The SBA asserts that the Commission failed to (1) clearly state its regulatory objectives, (2) describe the impact its proposed rules would have on small businesses, and (3) propose alternatives designed to minimize this impact. The Commission disagrees.

90. First, the deregulatory goal of this biennial regulatory review proceeding is clear. The Communications Act requires the Commission to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. Subsequent to making those determinations, the Commission is directed to ''repeal or modify any regulation it determines to be no longer in the public interest.'' Pursuant to that mandate, the Commission has reviewed whether competitive or other developments in CMRS markets warrant elimination or modification of any Commission regulations. In particular, in this proceeding, the Commission reviewed whether to retain, modify or eliminate two regulations that currently limit the aggregation of broadband CMRS spectrum: (1) the CMRS spectrum cap and (2) the cellular cross-interest rule. The *NPRM* addressed possible modifications to the spectrum cap and cellular cross-interest rules, including, among other things: (1) Increasing the amount of spectrum that a single entity may hold in a given geographic area beyond 45/55 MHz; (2) modifying the spectrum cap's ten percent population overlap threshold and/or attribution rules; (3) eliminating or modifying the rule that limits attributable SMR spectrum to 10 MHz; (4) altering the cellular cross-interest rule's provisions as they relate to disaggregation of spectrum and/or post-licensing divestiture; and (5) modifying the ownership attribution standards under both rules. Finally, the Commission notes that by its nature, the Commission's statutory biennial regulatory review obligation contemplates a somewhat open-ended review of the Commission's rules with an eye toward deregulation.

91. Second, the *NPRM* sufficiently described the impact the Commission's proposed rules would have on small businesses, as required by the RFA. SBA states, ''the Commission should explain whether lifting the spectrum cap would tend to discourage small business new entry or drive existing small businesses from the marketplace.'' Again, the Commission notes that its statutory biennial regulatory review requires it to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. In the *NPRM,* the Commission stated:

> Since [September 1999], there have been international and economic developments that have significantly affected CMRS markets. For example, consolidation within the CMRS industry in an effort to create national service footprints has tended to reduce the number of smaller entities providing broadband CMRS on a purely local level. As part of this 2000 biennial review, we seek to develop a record regarding whether the CMRS spectrum cap and cellular cross-interest rule continue to make regulatory and economic sense in CMRS markets in the current-, mid-, and long-term. In doing so, we generally request comment on whether retention, modification, or elimination of the CMRS spectrum cap and/or cellular cross-interest rule is appropriate with respect to small businesses that are licensees in the cellular, broadband PCS and/or SMR services. We seek comment on whether there continues to be a need for these rules to ensure that new entrants, including small businesses, have access to spectrum licenses both at auction and in the secondary market. We inquire whether these bright-line rules continue to create efficiencies and reduce transaction costs for small business. We consider the impact on small businesses if we were to adopt alternative approaches that rely more heavily on case-by-case review. We also seek specific comment on various aspects of these rules that particularly affect small business, such as the [sic] whether our September 1999 decision to increase attribution standards to 40 percent has benefited small businesses.

92. The above-quoted language demonstrates that the Commission raised and addressed the very issues SBA claims were absent in the *NPRM.* The Commission believes it sufficiently raised questions to obtain comment on these issues. For instance, the

Commission notes that the above language asks whether ''there continues to be a need for these rules to ensure that new entrants, including small businesses, have access to the spectrum licenses both at auction and in the secondary market.'' Accordingly, the *NPRM* met the RFA's requirements.

93. Finally, SBA states that ''the Commission should raise and explore alternative ways to encourage nationwide networks, alleviate spectrum shortages, or safeguard competition, and analyze how these alternatives would affect entities with varied resources.'' As noted in the above-quoted language, the *NPRM* raised a series of issues concerning small entities, affording such entities adequate opportunity to comment on these issues. In addition, as previously noted, biennial regulatory review by its nature contemplates a somewhat open-ended review of the Commission's rules with an eye toward deregulation, as opposed to a more targeted rulemaking. The deregulatory nature of the *NPRM* focuses on whether to retain, modify or eliminate two rules—the CMRS spectrum cap and the cellular cross-interest rule—because they may no longer be necessary in the public interest as a result of meaningful economic competition. Therefore, within the context of its biennial regulatory review, the Commission believes the *NPRM* raised and explored the possible alternatives (*i.e.,* whether to retain, modify or eliminate the two rules). In addition, the *NPRM* sought comment on alternative courses of action if the Commission does eliminate the spectrum cap.

94. NTCA argues that ''[t]he unconditional raising or lifting of the spectrum cap will likely result in further consolidation within the CMRS industry and diminish the opportunities for smaller entities to provide broadband CMRS service.'' Notably, NTCA does not, in its comments on either the body of the *NPRM* or the IRFA, oppose modifying or eliminating either the spectrum cap or the cellular cross-interest rule. Nor does NTCA identify any specific inadequacy in the IRFA. Rather, as an ''alternative to its proposed rule changes,'' NTCA urges the Commission to take several actions unrelated to its spectrum aggregation limits: (1) license spectrum according to smaller geographic service territories, (2) take actions to increase the availability of spectrum to small carriers on the secondary market, and (3) enforce strict construction requirements against CMRS licensees.

95. The alternatives that NTCA advocates are beyond the scope of this proceeding. Specifically, the Commission considers the size of geographic licensing areas in the context of establishing licensing rules for particular bands of spectrum. The Commission is considering in another proceeding potential measures to facilitate the availability of spectrum in secondary markets. *Notice of Proposed Rulemaking* (65 FR 81475, December 26, 2000). Any potential changes in the Commission's construction requirements, or establishment of construction requirements for newly assigned spectrum, are also best considered separately from spectrum aggregation limits. The Commission has considered in this *R&O* alternatives to eliminating the spectrum cap rule, and has adopted measures to minimize the impact of its decision on small entities.

96. No other comments were submitted specifically in response to the IRFA.

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

97. 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 their rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' 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 which: (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. 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. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (ninety-one percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

98. The rule changes adopted in this *R&O* will affect small businesses that currently are or may become licensees in the cellular, broadband PCS and/or SMR services. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

99. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 808 small cellular service carriers that may be affected by the policies adopted in this *R&O*.

100. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity''' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. Subsequently, the Commission defined an additional classification—''very small business''—for blocks C and F for entities that, together with their affiliates, have had average gross revenues of not more than $15 million

for the preceding three calendar years. These regulations defining ''small entity''' in the context of broadband PCS auctions and licensing have been approved by the SBA.

101. The Commission has held six auctions of broadband PCS licenses to date. No small businesses within the SBA-approved definition bid successfully for licenses in the first of these auctions, Auction No. 4, in which the Commission made available licenses in blocks A and B. In Auction No. 5, the initial C block auction, eighty-nine (89) winning bidders qualified as small entities, winning 493 licenses. In the next C block auction, Auction No. 10, seven (7) winning bidders qualified as small entities, winning eighteen (18) licenses. A total of ninety-three (93) small and very small business bidders won approximately forty percent of the 1,479 licenses for blocks D, E, and F in the next broadband PCS auction, Auction No. 11. In Auction No. 22, forty-eight (48) bidders claiming small or very small business status won 277 of the 347 licenses offered. In Auction No. 35, the most recent broadband PCS auction, twenty-nine (29) of the thirty-five (35) winning bidders qualified as small or very small businesses and won 247 licenses. Accordingly, a maximum of 266 small entities have been awarded or placed high bids on licenses in broadband PCS block auctions to date.

102. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. The auction of the 1,020 geographic area licenses for the 900 MHz SMR band began on December 5, 1995, and was completed on April 15, 1996. Sixty (60) winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

103. The lower 230 channels in the 800 MHz SMR band are divided between General Category channels (the upper 150 channels) and the lower 80 channels. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels (plus three (3) 800 MHz licenses for the upper 200 channels from a previous auction) began on August 16, 2000, and was completed on September 1, 2000. At the close of the auction, 1,030 licenses were won by bidders. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 2,800 geographic area licenses for the lower 80 channels of the 800 MHz SMR service began on November 1, 2000, and was completed on December 5, 2000. Nineteen (19) winning bidders for geographic area licenses for the lower 80 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission, therefore, estimates that there are up to 100 geographic area licensees that are small entities in the 800 MHz and 900 MHz SMR bands. In addition, there are 1,144 incumbent site-by-site SMR licensees on the 800 and 900 MHz bands.

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

104. The rules in this *R&O* do not impose any additional reporting, recordkeeping or other compliance measures.

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

105. In this proceeding, the Commission considered whether to retain, modify, or, alternatively, to eliminate the CMRS spectrum cap and cellular cross-interest rules. The Commission also asked whether there were alternatives to these rules that could avoid any potential public interest costs. The Commission has weighed the benefits of such alternative means of reviewing CMRS spectrum aggregation, specifically considering whether to continue using prophylactic rules or to review spectrum aggregation issues on a case-by-case basis.

106. As an alternative to eliminating the spectrum cap rule, the Commission considered continuing to apply a prophylactic approach to the potential anti-competitive effects of CMRS spectrum aggregation. The Commission recognized that different costs and benefits can be associated with bright-line rules and case-by-case review with respect to degree of flexibility, predictability of outcome, likelihood of rejecting beneficial (or approving harmful) transactions, ability to account for the particular attributes of a transaction or market, speed of decision-making, and resource demands on the Commission and carriers. On balance, and in light of the growth of both competition and consumer demand in the CMRS market, the Commission concludes that case-by-case review, accompanied by enforcement of sanctions in cases of misconduct, is now preferable to the spectrum cap rule because it gives the Commission flexibility to reach the appropriate decision in each case, on the basis of the particular circumstances of that case. The Commission is persuaded that competition is now robust enough in CMRS markets that it is no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest.

107. The Commission believes its provision for a transition period prior to January 1, 2003, for eliminating the spectrum cap will minimize the impact of its decision on small businesses. The Commission notes that several commenters argue against eliminating or increasing the spectrum cap on the ground that the cap preserves opportunities for entrepreneurs and providers of niche services. As other commenters point out, however, the spectrum cap rule does nothing in and of itself to create opportunities for entrepreneurs, and may actually harm small businesses by limiting their access to existing carriers as sources of capital and management expertise. To the extent the spectrum cap does create some potential opportunities for entrepreneurs, the Commission finds this benefit is insufficient to outweigh the benefits of moving away from a bright-line rule approach, particularly in light of the other tools the Commission has to help preserve opportunities for small businesses—its ability to carry out case-by-case review of transactions and its ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. Nevertheless, although it believes that opportunities for small businesses can be fully protected through a case-by-case approach, the Commission recognizes that advancing one's positions in a case-by-case regime could require resources that small businesses may not be immediately prepared to commit. Furthermore, regulatory certainty and speed of processing are likely to be particularly important to small businesses, which typically are less able

to withstand extended or costly administrative processes. Therefore, in considering the adoption of guidelines and procedures, the Commission will take account of the needs of small businesses. The Commission fully expects that case-by-case review, properly performed, will offer large and small businesses alike the benefits of flexibility and attention to the specific details of a particular transaction. The Commission also commits itself to vigorous enforcement of safeguards against anti-competitive activity.

108. During the transition period, the Commission raises the spectrum cap to 55 MHz in all geographic areas. The Commission considered and rejected the alternative of leaving the spectrum cap at 45 MHz in MSAs because it determined that a 45 MHz cap may over the next fourteen months impose capacity constraints, and ensuing costs to consumers, on carriers in certain urban markets. The Commission also determined that a moderate increase in the spectrum cap, under current market conditions, does not pose an undue risk of anti-competitive conduct during the transition period. Finally, the Commission notes that it will continue to review the competitive consequences of transactions that are at or below the spectrum cap if specific evidence of competitive concerns is presented either by interested parties or through review by Commission staff.

109. With respect to the cellular cross-interest rule, the Commission determines that the rule is no longer necessary or appropriate in MSAs because the cellular duopoly conditions that prompted the rule's adoption no longer exist. Thus, under current market conditions in MSAs, there is no reason to treat the aggregation of cellular spectrum any differently than other aggregation of CMRS spectrum. In RSAs, by contrast, the record, though limited on this point, indicates that competition to the incumbent cellular licensees is not as developed as in MSAs. Thus, based on the record in this proceeding, it appears that a combination of interests in cellular licensees would more likely result in a significant reduction in competition. The Commission, therefore, retains the cellular cross-interest rule in RSAs, subject to waiver of the rule for those RSAs that are shown to exhibit market conditions under which cellular cross-interests may be permissible without a significant likelihood of substantial competitive harm.

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

Paperwork Reduction Act Analysis

111. This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and does not contain any new or modified information collections subject to Office of Management and Budget Review.

Procedural Matters and Ordering Clauses

112. Pursuant to the authority of sections 1, 4(i), 11, 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), and 309(j), this *R&O* is adopted, and §§ 20.6 and 22.942 of the Commission's Rules, 47 CFR 20.6, 22.942, are amended as set forth in the *R&O,* effective February 13, 2002.

113. 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, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 47 CFR Parts 20 and 22

Communications common carrier.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 20 and 22 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–54, 303, and 332 unless otherwise noted.

2. Section 20.6 is amended by revising paragraphs (a) and (e)(4)(i) and adding a new paragraph (f) to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *Spectrum limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (*see* 47 CFR 20.9) shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.

* * * * *

(e) * * *

* * * * *

(4)(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (*see* § 1.948 of this chapter; *see also* § 24.839 of this chapter (PCS)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit. Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

* * * * *

(f) *Sunset.* This rule section shall cease to be effective January 1, 2003.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

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

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.942 is amended by revising paragraphs (a) and (c) to read as follows:

§ 22.942 Limitations on interests in licensees for both channel blocks in RSAs.

(a) *Controlling Interests.* A licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for one channel block in a CGSA may not have a direct or indirect ownership interest of more than 5 percent in the licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an

individual or entity that actually controls a licensee for the other channel block in an overlapping CGSA, if the overlap is located in whole or in part in a Rural Service Area (RSA), as defined in 47 CFR 22.909.

* * * * *

(c) *Divestiture.* Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

(1) Parties needing to divest controlling or otherwise attributable interests set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting interest (*see* § 1.948 of this chapter) or other request for Commission approval by which, if granted, such parties no longer would have an attributable interest in the conflicting interest. Divestiture may be to an interim trustee if a buyer or acquirer of the interest has not been secured in the required period of time, as long as the buyer or acquirer of the interest has no interest in or control of the trustee, and the trustee may dispose of the interest as it sees fit. Where parties to such applications or requests for Commission approval hold less than controlling (but still attributable) interests, they shall submit a certification that the applicant or acquirer of the interest and all parties to the application or request for Commission approval have come into compliance with the limitations on interests in licensees for both channel blocks set forth in this section.

(2) [Reserved]

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[FR Doc. 02–868 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 64

[CC Docket No. 92–105, WT Docket No. 00–110; FCC 01–351]

The Use of N11 Codes and Other Abbreviated Emergency Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this document, takes several steps towards implementation of 911 as the universal emergency assistance number for both wireline and wireless telephones. Specifically, the Commission adopts a maximum period for all carriers, serving areas with a designated public safety answering point (PSAP) or serving areas where a PSAP has not yet been designated, to transition to routing 911 calls to a PSAP, an existing statewide established default point, or an appropriate local emergency authority. The decision also addresses steps the Commission will take to encourage and support States in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public. Finally, the decision clarifies that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services. The action is taken to satisfy the Commission's legislative mandate and to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services.

EFFECTIVE DATE: February 13, 2002, except for § 64.3002, which contains modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for this section. Public comment on the information collections are due March 15, 2002, and comments by the Office of Management and Budget are due May 14, 2002.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Kimmel or David Siehl,202–418–1310, or Cheryl Callahan, 202–418–1806. For further information concerning the information collection contained in this Order, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110 (Order), and Memorandum Opinion and Order in CC Docket No. 92–105 and WT Docket No. 00–110, FCC No. 01–351 (cited collectively as Order), adopted November 29, 2001, and released December 11, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov*.

Synopsis of the Order

1. The Commission, in the Order, takes further steps to implement the provisions in the Wireless Communications and Public Safety Act of 1999 (911 Act), enacted by Congress to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services and to implement 911 as the universal emergency assistance number. (A summary of the Third Notice of Proposed Rulemaking in CC Docket No. 92–105 may be found at 65 FR 56752, September 19, 2000. The First Notice of Proposed Rulemaking in WT Docket No. 00–110 was summarized at 65 FR 56757, September 19, 2000.)

2. The Commission first adopts a flexible transition approach to implementation of 911 as the emergency assistance number. This approach reflects the different technical and operational measures that carriers need to undertake and provides carriers the flexibility necessary for them to effectuate transition to 911 expeditiously. The Commission notes that the transition period adopted in the Order does not apply to those carriers who currently route 911 calls to PSAPs in their service area.

3. As an initial matter, paragraph 14 of the Order discusses the use of the term ''appropriate authorities'' as used in the 911 Act, and finds it reasonable to interpret this term to include emergency answering points such as county sheriff offices, volunteer fire departments, or other similar points that are effectively functioning as PSAPs for purposes of receiving emergency calls, and, if necessary, relaying the calls to other emergency service providers, for the purpose of responding to emergencies.

4. As discussed in paragraphs 15 through 31 of the full text of the Order, the Commission establishes a flexible transition approach to 911 implementation. First, where carriers do not currently route 911 calls to officially designated PSAPs, the Commission

adopts a nine-month transition period for each of the particular circumstances carriers will face. Where a PSAP has been designated, the Commission adopts a maximum period, running from the release of this Order and expiring nine months later, for carriers to deliver all 911 calls to that PSAP. Similarly, in areas where no PSAP has been designated, the Commission adopts a requirement that within nine months of the release of this Order, carriers must begin delivering 911 calls: (a) statewide-established default point; (b) if none exists, to an appropriate local emergency authority, such as the police or county sheriff, selected by an authorized State or local entity; or (c) as a matter of last resort and to avoid the blocking of 911 calls, if no PSAP has been designated and neither a statewide default answering point nor an appropriate local emergency authority has been selected, to an appropriate local emergency authority, based on the exercise of the carrier's reasonable judgment, following initiation of contact with the State Governor's designated entity under section 3(b) of the 911 Act.

5. In this regard, the Commission strongly encourages State and local authorities to designate the appropriate emergency response points. The Commission believes that these government agencies, as the primary safety and security agencies should decide the routing of 911 calls. For these reasons, once a carrier has been made aware that no appropriate local emergency authority has been selected, the carrier should notify the Governor's designated entity as soon as practicable of that matter and allow at least 15 days for a response from that entity before proceeding to select an answering point on its own initiative.

6. Further, as discussed in paragraphs 16, 33, and 34 of the Order, in transitioning to the use of 911, carriers must implement a permissive dialing period, during which emergency calls will be routed to the appropriate emergency response point using either 911 or the seven or ten-digit number to allow time for the education of consumers as to the transition to the use of 911. The Commission requires carriers to continue to deliver both 911 calls and emergency calls made using a seven or ten-digit number under a permissive dialing scheme until the State or local jurisdiction determines to phase out the use of the seven or ten-digit number entirely. Once a determination has been made to end a permissive dialing period, as described in paragraphs 16 and 37 of the Order, the Commission requires carriers to furnish a standard intercept message, in accordance with accepted industry practices and guidelines to further educate callers about the dialing code change.

7. Additionally, as indicated in paragraphs 42 through 45 of the Order, the Commission adopts a limited transition report requirement. Specifically, the Commission requires carriers to file two transition reports covering the following geographic areas: (1) Those counties where there is no 911 service; (2) those counties in the process of implementing 911; and (3) those counties that have basic 911 service only in some parts. The first transition report must be filed three months following the release of the Order. The second transition report must be filed 15 calendar days following the end of the transition. Carrier transition reports must be filed, as appropriate depending upon whether the carrier's service is wireline or wireless, with the Chief of the Common Carrier Bureau or the Chief of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The Commission encourages carriers to file their transition reports electronically to the appropriate electronic mailbox that has been established by each Bureau. For ease of accessibility, a link to these reports will be placed on the Commission's E911 website. Depending upon whether the carrier's service is wireline or wireless, please email the report to either *911transitionreport-ccb@fcc.gov* or *911transitionreport-wtb@fcc.gov*. In addition to the information included in the reports as described in paragraphs 44 and 45 of the Order, the Commission delegates authority to the Chiefs of the Common Carrier Bureau and the Wireless Telecommunications Bureau to require additional information, as necessary to evaluate the carriers' progress in achieving the transition and their compliance with the transition requirements adopted in the Order.

8. Paragraphs 46 through 52 of the Order address steps the Commission will take to encourage and support States in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public. The Commission assumes a leadership role to encourage and support States' efforts to deploy comprehensive emergency communications networks by pursuing an informal approach rather than the adoption of specific rules. To carry out its role, the Commission will maintain an ongoing dialog with State and local officials, through interactions with various associated groups such as the National Governors' Association, the National Conference of State Legislatures, and the National Association of Regulatory Utility Commissioners. The Commission also will make presentations on 911-related issues at conferences of various associations, hold roundtable discussions, and provide an information clearinghouse function with links from its E911 website. The Commission will also explore participation in the National Emergency Number Association's (NENA) ''critical issues forums,'' providing a website link for NENA's Report Card to the Nation and updates to that report and assisting in the establishment of State-level clearinghouses.

9. Finally, paragraphs 55 through 62 of the Order clarify that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis

10. This Order contains a modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 15, 2002, and comments from the Office of Management and Budget are due May 14, 2002. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested OMB emergency approval of these modified burdens and will place a document in the **Federal Register** once this approval is received.

OMB Control Number: 3060–0954.

Title: Implementation of the 911 Act, The Use of N11 Codes and Other Abbreviated Dialing Arrangements.

Form No. N.A.

Type of Review: Revision of an existing information collection.

Respondents: Business or other for profit; not for profit institutions, State or local government.

Number of Respondents: 800 respondents, 400 responses.

Estimated Time Per Response: 4.5 hours.

Frequency of Response: Third-party Disclosure, on occasion; Reporting, twice.

Total Annual Burden: 3,100 hours.

Cost to Respondents: 0.

Needs and Uses: The burdens contained in this Order are all needed to ensure prompt and smooth transition to universal 911 emergency calling services.

Final Regulatory Flexibility Act Analysis

11. This is a summary of the Commission's Final Regulatory Flexibility Analysis. The full text of the Analysis may be found in Appendix C of the Order.

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the Notice of Proposed Rulemaking (NPRM) and the Third NPRM (Third NPRM) in this proceeding. The Commission sought written public comment on the proposals in the NPRM and the Third NPRM, including comment on both IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of the Memorandum Opinion and Order on Reconsideration and Fifth Report and Order

13. In this and Fifth Report and Order (Fifth R&O) in CC Docket No. 92–105, First Report and Order (First R&O) in WT Docket No. 00–110, and Memorandum Opinion and Order on Reconsideration in both dockets (collectively referred to as the Order) the Commission takes further steps to implement the provisions in the Wireless Communications and Public Safety Act of 1999 (911 Act) enacted to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. The actions adopted in the Order are intended to ensure that these Congressional goals are implemented effectively and efficiently.

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

14. No comments were filed in direct response to the IRFAs. However, the Commission received comments regarding several issues affecting small entities. For example, as discussed in paragraphs 4 through 9 of the Order, commenters questioned whether the Commission is the appropriate entity to establish transition periods for implementation of universal 911 dialing. The Commission disagrees, finding that to delegate the responsibility to States and localities for establishing transition periods for carriers could result in multiple, conflicting transition periods. Also, as indicated in paragraphs 42 through 45 of the Order, commenters opposed a requirement that carriers file transition reports for Commission use as a tool to monitor carrier progress in converting to universal 911. However, the Commission adopts a limited transition report requirement which is less burdensome than that proposed in the Third NPRM. As adopted, carriers are required to file only two reports and these reports will focus only on carriers serving those areas of country in which 911 is not currently in use. This requirement is discussed in more depth in the FRFA section, *infra,* considering steps taken to minimize the significant economic impact on small entities and alternatives considered.

15. Paragraphs 48 through 52 of the Order discusses ways in which the Commission can comply with its obligation to offer support of comprehensive state emergency plans. Although the Commission received only nine comments on this issue, one comment, for American Samoa License, Inc., in particular, provided significant input on, among other things, the unique circumstances of its situation and the way a ''one-size-fits-all'' model plan would not address its particular needs. In response to such comment, the Commission adopts an informal leadership approach to its responsibilities in this regard, for example, by participating in organizational meetings setup by interested parties, and placing details of information-sharing measures by means of the FCC's website and public notice, which the Commission hopes will encourage increased participation to which we can add our support.

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

16. 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 adopted in this action. 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. 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'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with populations 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.

18. This list includes categories that at present may not be subject to the 911 Act rules. At present, covered carriers include all cellular licensees, broadband PCS licensees, and certain carriers of Specialized Mobile Radio (SMR) licensees. The SMR providers that are presently covered include ''only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.'' For those carriers that presently do not need to comply with the 911 requirements, such

as Mobile Satellite Service (MSS) carriers, the Commission acknowledges that, at some point in the future, they may be required to provide appropriate access to emergency services.

19. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for ''Cellular and Other Wireless Telecommunications'' and ''Wired Telecommunications Carriers.'' According to these standards, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the effected services fit into the SBA definition of small business, the Commission has consistently referred to Table 5.3 in *Trends in Telephone Service (Trends)* a report published annually by the Commission's Common Carrier Bureau.

20. *Local Exchange Carriers.* According to the most recent *Trends* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, or are not independently owned. However *Trends* indicates that 1,037 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS.

21. We have included small incumbent local exchange carriers in this RFA analysis. 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.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

22. Also included in the number of Local Exchange Carriers is the rural radio telephone service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the NAICS definition.

23. *Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends* indicates that 349 CAPs and CLECs, 87 local resellers, and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, *Trends* states that 297 CAPs and CLECs, 86 local resellers, and 56 other local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees for a total of 439 such entities qualified as small entities.

24. *Fixed Local Service Providers and Payphone Providers. Trends* reports that there are 1,831 fixed local service providers and 758 payphone providers. Using the NAICS standard for small entity of fewer than 1,500 employees, *Trends* estimates that 1,476 fixed local service providers, in combination with affiliates have 1,500 or few employees and thus qualify as small entities. In addition, 755 payphone providers report that, in combination with their affiliates, they employ 1,500 or fewer individuals.

25. *Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers.* There are 806 entities in this category as estimated in *Trends,* and 323 such licensees in combination with their affiliates have 1,500 or fewer employees and thus qualify using the NAICS guide, as small businesses.

26. *Other Mobile Service Providers. Trends* estimates that there are 44 providers of other mobile services, and again using the NAICS standard, 43 providers of other mobile services in combination with their affiliates hire 1,500 or fewer employees and thus may be considered small entities.

27. *Toll Service Providers. Trends* calculates that there are 738 toll service providers, including 204 interexchange carriers, 21 operator service providers, 21 pre-paid calling card providers, 21 satellite service carriers, 454 toll resellers, and 17 carriers providing other toll services. *Trends* further estimates that 656 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS. This figure includes 163 interexchange carriers, 20 operator service providers, 20 pre-paid calling card providers, 16 satellite service carriers, 423 toll resellers, and 15 carriers providing other toll services.

28. *Offshore Radiotelephone Service.* This service operates on several TV broadcast channels that are not otherwise used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Commission adopts a flexible approach of basic requirements based on maximum periods for certain technical and operational aspects of a transition and recommends steps to ensure the prompt delivery of emergency calls across the nation. Paragraphs 18 through 21 of the Order consider transition periods for areas where there is a designated public safety answering point (PSAP) or once a PSAP is designated. For areas in which State or local authorities have established a PSAP, the Commission adopts a maximum nine-month transition period that runs from December 11, 2001, for carriers to deliver all 911 calls to that PSAP. Subsequent to the transition period, the Commission establishes a permissive dialing period in order for carriers to educate consumers on the transition to 911-dialing. The Commission also encourages such carriers, following the permissive dialing period, to furnish a standard intercept message. (*See* paragraphs 16 and 37 of the Order).

30. Also, as detailed in paragraphs 22 through 31 of the Order, in areas where there is no PSAP, the Commission adopts the following requirements: within nine months of the effective date of this Order, carriers must begin delivering 911 calls to either a statewide established default point or, if none exists, to an appropriate local emergency authority, such as the police or country sheriff. If a State or local authority prefers that carriers deliver 911 calls to some other local default point, the Commission provides that carriers must begin delivering 911 calls to such a default point no later than nine months from the date of the request by the local authority or appropriate State entity. Once a State or local authority has formally designated a PSAP for an area, a carrier will have a nine-month period to deliver 911 calls

to that PSAP. Paragraph 27 of the Order establishes that, where no appropriate local emergency authority has been selected, that carriers contact, as soon as practicable, the entity designated by that State's Governor to assist in implementation of 911, and to allow 15 days for a response. If none is forthcoming, then carriers should exercise reasonable judgment in determining where to deliver 911 calls.

31. Paragraphs 42 through 45 of the Order consider implementation and enforcement of transition period deadlines. In this regard, the Commission adopts a limited transition report requirement which requires that carriers serving areas where 911 is not in use as the emergency number on the date of enactment of the law file two reports as detailed in paragraphs 43–45 of the Fifth R&O.

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

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include, among others, 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

33. The Commission is limited in establishing less stringent requirements for small entities in this proceeding by the critical public safety issues of concern and by legislative mandate. The results of delayed or insufficient response to wireless 911 calls can be equally fatal whether the carrier involved is a large or small entity. When given alternatives which do not compromise the public safety goals of this proceeding but offer all entities the flexibility to carry out their responsibilities in a way that is tailored to their individual locality and its needs, the Commission has chosen the more flexible option. For example, in areas where there is neither a PSAP nor a statewide default answering point, many of which are served by small carriers or are governed by small entities, an existing local law enforcement agency such as a country sheriff could serve as the local emergency authority.

34. On the other hand, several carrier-commenters recommend that the Commission allow carriers and States and localities to establish transition periods for implementation of 911 dialing. As discussed in paragraphs 5 through 9 of the Fifth R&O, the Commission declines to adopt this alternative, finding that to delegate such authority to carriers and PSAPs could result in multiple, conflicting transition periods and create confusion in critical emergency situations as travelers move from one locality to another. Further, the Commission finds that delegating the authority to establish 911 transition periods to carriers and PSAPS could hinder the Commission's ability to ensure that the transition to 911 dialing occurs on a timely basis and could hinder the Commission's overall ability to monitor the transition to 911 as the nationwide emergency number. If the Commission had authorized States and localities to establish 911 transition periods, it would place the responsibility and burden for this administrative work on the entities themselves, many of whom are small. It should be noted, however, that the Commission recognized the need for a transition period, noting the fluid nature of technology, and provided the flexible transition period adopted in the Fifth R&O. The transition period will allow both large and small carriers time, not only to complete the technological updates and coordination which may be necessary to provide 911 service, but also time to educate the public regarding 911 service. Also, in establishing flexible transition periods, the Commission recognizes that individual service areas face different technical and operational measures.

35. In this regard, as discussed in paragraphs 32 through 39 of the Order, the Commission elects not to promulgate rules for carriers to educate the public about 911 transition, but simply encourages carriers to plan and provide time in the transition period for planning and executing a public education program. Several commenters suggest additional requirements regarding educating the public, which the Commission found to be unnecessary and burdensome, particularly on small entities. One commenter, for example, proposed a requirement that carriers service areas that currently use non-911 abbreviated numbers for emergency purposes notify the agency using such numbers that they will not be available after the transition period. The same commenter recommended requirements for carriers to provide billing inserts apprising customers of the conversion to 911 as the universal emergency assistance number. The Commission encourages such public education efforts to enable the permissive dialing period to be discontinued. Nonetheless, once discontinued, the Rules require the carriers to intercept calls made via non-911 emergency numbers with an announcement to alert the caller to the change to 911 for emergency calls. This offers all carriers, including small carriers, the flexibility to design the appropriate public education program that best satisfies the need for 911 education within the individual service area, while offering the carrier some control over expenditures in this area.

36. In one area, however, the Commission, faced with its legislative mandate to monitor the progress of carriers in the transition to 911, adopted a requirement that may particularly impact rural and small carriers. As indicated in paragraphs 42 through 45 of the Order, the Commission adopts a limited requirement for transition reports. In the NPRM, the Commission proposed a broader approach to transition reports that would have affected all carriers and would be filed on a more regular basis than the requirement adopted in the Fifth R&O. The adopted requirement states that only those carriers providing service in areas where 911 is not in use as the emergency number on the date of enactment of the law must file two reports. The filing of the reports will be limited to those counties where there is no 911 service; those counties that are in the process of implementing 911; and those counties that have basic 911 service only in some parts. The first report is to be filed March 11, 2002 and the second report 15 calendar days after the end of the transition period. Although the actual regulation is less burdensome overall on all carriers, it is likely that carriers that do not yet offer 911 service would be small entities as defined by the SBA. In addition, as described in paragraph 27 of the Order, the Commission adopts a requirement that carriers serving areas where no PSAP or appropriate local emergency authority has been established must initiate contact with the entity designated by the Governor before exercising reasonable judgment as to where to deliver 911 calls.

37. The Commission recognizes that the burden for making progress towards 911 implementation may fall, during the transition period, on small and rural entities because they are most likely to require the most effort in implementing 911. They may cover larger, less populated areas who may face funding

problems and who may have farther to go in achieving the expensive technological advances which facilities serving more urban areas have access to. By the same token, however, these same disadvantages that many such small carriers and State or local governments face also dictate a need for optimum 911 emergency service as quickly as possible. The Commission has tried to make compliance with 911 rules and implementation dates as fair as possible to small entities by, for example, establishing flexible transition periods. In establishing the limited transition report requirement, the Commission provides that carriers might, at their option, consolidate reporting and eliminate redundant reports by filing the transition reports either collectively with those carriers similarly situated or combining reports for several counties facing similar problems, thus saving the affected carriers time and costs. It is intended that the transition reports will provide the Commission with information leading to solutions to the unique problems faced by small entities in the implementation of 911 service. In addition, the Commission hopes the reporting process will generate a cooperative dialogue regarding how entities with similar problems can resolve such issues.

38. The Commission, instead of establishing a proposed program that would require carriers and PSAPS, large and small, to provide information to each other or to the Commission regarding problems exclusive to their locality, establishes an informal program in which the Commission would serve as a clearinghouse for such information. Further, instead of establishing a coordination requirement forcing PSAPs and carriers to meet to discuss intra-locality issues, the Commission emphasizes the importance of assuming a leadership role in providing coordination and technical assistance and endorses the joint leadership of the Commission and State Governors in this area to assist parties involved with integrated comprehensive emergency communications systems. (*See* paragraphs 46 through 52 of the Order)

39. *Report to Congress:* The Commission will send a copy of this decision, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(a). In addition, the Commission will send a copy of the Order, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

40. Pursuant to §§ 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310, the Fifth Report and Order in CC Docket No. 92–105 is adopted.

41. Part 64, new Subpart AA, of the Commission's rules is adopted to require wireline and wireless licensees to complete the transition to 911 as the universal emergency assistance number, as set forth in Appendix B of the Order and will become effective February 13, 2002, except for § 64.3002, which contains modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a notice in the **Federal Register** announcing the effective date for this section.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this, Fifth Report and Order, First Report and Order, and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. Pursuant to §§ 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310, the First Report and Order in WT Docket No. 00–110 is adopted.

44. The Petition for Reconsideration or Clarification of the Fourth Report and Order, in CC Docket No. 92–105, filed by Maritel, Inc. on September 28, 2000, IS GRANTED to the extent described in the Order.

45. Authority is hereby delegated to the Chiefs of the Common Carrier Bureau and the Wireless Telecommunications Bureau to require additional information, as necessary, to evaluate carriers progress in achieving the transition to the use of 911 and their compliance with the transition requirements set forth in the Order.

List of Subjects

47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

47 CFR Part 64

Communications common carrier, Radio, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications amends 47 CFR Parts 20 and 64 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.3 is amended by adding definitions of ''appropriate local emergency authority'' and ''statewide default answering point'' in alphabetical order to read as follows:

§ 20.3 Definitions.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited, to an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

* * * * *

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

3. Section 20.18(b) is revised to read as follows:

§ 20.18 911 Service.

* * * * *

(b) *Basic 911 Service.* Licensees subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 64.3001 of this chapter, provided that ''all wireless 911 calls'' is defined as ''any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier.''

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

5. Add subpart AA to part 64 to read as follows:

Subpart AA—Universal Emergency Telephone Number

Sec.
Sec. 64.3000. Definitions.
Sec. 64.3001. Obligation to transmit 911 calls.
Sec. 64.3002. Transition to 911 as the universal emergency telephone number.
Sec. 64.3003 Obligation for providing a permissive dialing period.
Sec. 64.3004 Obligation for providing an intercept message.

Subpart AA—Universal Emergency Telephone Number

Authority: 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310.

§ 64.3000 Definitions.

(a) *911 calls.* Any call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider. For wireless carriers, all 911 calls include those they are required to transmit pursuant to § 20.18 of the Commission's rules.

(b) *Appropriate local emergency authority.* An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

(c) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive 911 calls and route them to emergency services personnel.

(d) *Statewide default answering point.* An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

§ 64.3001 Obligation to transmit 911 calls.

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 64.3002.

§ 64.3002 Transition to 911 as the universal emergency telephone number.

As of December 11, 2001, except where 911 is already established as the exclusive emergency number to reach a PSAP within a given jurisdiction, telecommunications carriers shall comply with the following transition periods:

(a) Where a PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to a PSAP no later than September 11, 2002.

(b) Where no PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to the statewide default answering point no later than September 11, 2002.

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 64.3003 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven-or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction determines to phase out the use of such seven-or ten-digit number entirely and use 911 exclusively.

§ 64.3004 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 64.3003, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven-or ten-digit emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

[FR Doc. 02–869 Filed 1–11–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–132; FCC 01–314]

1998 Biennial Review—Multichannel Video and Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a number of minor corrections to various part 76 rules pertaining to the public file, notice, recordkeeping, and reporting requirements which were published in the **Federal Register** of Tuesday, September 5, 2000 (65 FR 53610). This action completes the Commission's 1998 biennial review of the public file and notice requirements concerning cable television.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Sonia Greenaway-Mickle, Cable Services Bureau, (202) 418–1419.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (''Second Order''), FCC 01–314, adopted October 22, 2001; released October 31, 2001. The full text of the Commission's Order is available for inspection and copying during

normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/*.

In this document we make non-substantive rule changes to correct errors in the publication of part 76 of the Commission's rules. With this action, we complete the Commission's biennial review of the public file, notice, recordkeeping, and notice requirements applicable to cable operators under part 76 of the Commission's rules.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 76

Multichannel video and cable television service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Accordingly, 47 CFR part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1.The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

§ 76.305 [Removed]

2. Remove § 76.305.

3. Add Note to § 76.309 to read as follows:

§ 76.309 Customer service obligations.

* * * * *

Note to § 76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

4. Add Note 4 to § 76.630 to read as follows:

§ 76.630 Compatibility with consumer electronic equipment.

* * * * *

Note 4 to § 76.630: Cable operators must comply with the notification requirements pertaining to the waiver of the prohibition against scrambling and encryption, and comply with the public file requirement in connection with such waiver.

5. Section 76.1510 is revised to read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

§ 76.1700 [Amended]

6. Section 76.1700 is amended by removing and reserving paragraph (a)(1).

§ 76.1702 [Amended]

7. Section 76.1702 is amended the first time it appears by removing the editorial note. Section 76.1702 is further amended by removing it the second time it appears in its entirety.

§ 76.1802 [Amended]

8. Section 76.1802 is amended the first time it appears by removing the editorial note. Section 76.1802 is further amended by removing it the second time it appears in its entirety.

[FR Doc. 02–788 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 195

[Docket No. RSPA–99–6355; Amendment 195–74]

RIN 2137–AD61

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Repair Criteria)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule finalizes repair provisions for hazardous liquid pipelines. These provisions were initially proposed in the previous rulemaking action which addressed requirements for pipeline integrity management programs in high consequence areas for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline (Integrity Management rule.) In the Integrity Management rule, we requested comment on the repair and mitigation provisions, because the provisions were substantially modified from those originally proposed in the notice of proposed rulemaking. This final rule also makes several non-substantive corrections and clarifications to other provisions of the Integrity Management rule.

DATES: This rule is effective May 29, 2001, except for paragraph (h) of § 195.452 which takes effect February 13, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or by e-mail: *mike.israni@rspa.dot.gov*, regarding the remediation provisions in paragraph (h) or any other provisions of the integrity management rule; or the Dockets Facility (202) 366–9329, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov*. General information about the RSPA/Office of Pipeline Safety (OPS) programs may be obtained by accessing OPS's Internet homepage at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2000, RSPA published a final rule (65 FR 75378) that prescribed integrity management

program requirements for pipeline operators who own or operate 500 or more miles of pipeline transporting hazardous liquids or carbon dioxide. Under the Integrity Management rule, operators are required to develop and implement integrity management programs that focus on hazardous liquid and carbon dioxide pipelines that could affect high consequence areas. High consequence areas are defined as: populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways.

As part of the Integrity Management final rule, we requested comment on repair and mitigation provisions (§ 195.452(h).) We made this request because we substantially changed the initial provisions proposed in the notice of proposed rulemaking. We noted at that time that, at the end of the comment period (March 31, 2001), we would either publish a final rule modifying these repair provisions or stating that the provisions would remain unchanged. We received comments from six sources. Based on our analysis of the comments received, we modified paragraph (h). We discussed the comments, our responses, and changes made to these provisions below, in greater detail.

This document also makes several corrections and language clarifications to other provisions in § 195.452 and the Appendix C guidance. These changes do not affect the substance of any of the Integrity Management rule requirements. Rather, these revisions either correct the rule because of mistakes found since the rule was issued, or they clarify some of the language.

Corrections

The reference in paragraph (j)(4)(i) that the external monitoring technology provide an understanding of the line pipe equivalent to that obtained under paragraph (j)(2), was incorrect. The reference should be to the assessment methods listed in paragraph (j)(5), not to the evaluation described in paragraph (j)(2).

We deleted the sentence in paragraph (j)(4)(ii) requiring an operator to complete an integrity assessment within 180 days, after providing 180-days advance notice that it could not complete the five-year continual integrity assessment because of unavailable technology. If we did not remove this requirement, an operator would have to complete the re-assessment within the five-year period. Thus, the exception for a longer assessment period would be illusory.

We corrected the notification period in paragraph (j)(5)(iii), which required using alternative technology in the continual integrity assessment, from 60 days to 90 days. 90 days is consistent with the advance notice required for a baseline assessment that uses technology other than a hydrostatic test or an internal inspection tool.

We added paragraph number 1 to precede the first sentence in paragraph (l).

We corrected the grammar in several places in Appendix C.

Clarifications and Non-Substantive Revisions

We added carbon dioxide pipelines to § 195.452(a) to clarify that the integrity management program requirements for hazardous liquid pipelines to also apply to carbon dioxide pipelines regulated under Part 195.

We clarified in paragraphs (c)(1)(i) and (j)(5) that the three allowable assessment methods for the baseline and continual integrity assessments are to be applied to lap welded pipe and to low frequency ERW pipe.

We clarified that the periodic evaluation (paragraph (j)(2)) is to consider the results from the integrity assessments required by § 195.452, i.e., the baseline and continual integrity assessments.

We clarified the language in paragraph (j)(4)(i) regarding the justification and notice required for a variance based on engineering reasons.

We added the requirement that an address and facsimile number must be included for notifications required by the Integrity Management rule, rather than referencing these in other pipeline safety regulations. Due to the confusion of some operators about where to send a notification required by § 195.452 versus notifications required for other purposes, we added a new paragraph (paragraph (m)), which provides this information.

We revised several paragraphs in § 195.452 and Appendix C to make the terminology consistent with changes made to the terms used in paragraph (h).

We added another section to the guidance in Appendix C, which lists conditions an operator should include in its schedule for evaluation and remediation.

Advisory Committee Consideration

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) is the Federal advisory committee charged with the responsibility of advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed hazardous liquid pipeline safety standards. The committee is composed of members with the requisite statutory expertise who represent industry, government, and the general public.

We discussed the repair provisions in paragraph (h) and comments received on those provisions by teleconference with the THLPSSC at its meeting on August 13, 2001. Before the discussion, the committee members were mailed a summary of comments on the repair provisions, and a supplement to the cost-benefit analysis that addressed these provisions.

At the August 13 meeting, seven of the twelve current members participated in the teleconference. These seven THLPSSC members voted unanimously to accept the repair provisions, provided OPS consider the changes and comments discussed during the teleconference.

The following is a list of the changes and comments that the THLPSSC asked OPS to consider:

- Reevaluate and relax the 60-day repair schedule for dents on the top of the pipe.
- Allow mitigative measures, other than repair.
- The provisions assume the use of in-line-inspection technology to identify defects although the rule allows both hydrostatic testing and other technologies for the integrity assessments.
- Provide that discovery of a defect occurs when an engineering analysis of the assessment results is completed.
- Let the section reflect that some internal inspection assessment results cannot be analyzed as quickly as others. For example, it typically takes a year following completion of the assessment to receive final results from a crack detection tool.
- Delete the section on other conditions requiring repair or move it to Appendix C as guidance material.

We discuss below all changes made to § 195.452(h) in response to the THLPSSC and other commenters.

Comments on Section 195.452(h)

On December 1, 2000, OPS issued a final rule addressing pipeline integrity management in high consequence areas for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline (65 FR 75378) (The Integrity Management Rule.) This rule included provisions addressing the repair of conditions found during an integrity assessment. The provisions were found in paragraph (h) of section 195.452, under the title ''What actions must be taken to address integrity

issues.'' However, because the repair provisions in the Integrity Management rule were substantially different from what we initially proposed in the notice of proposed rulemaking, we requested comment on the provisions. All other provisions of the Integrity Management rule were final and became effective May 29, 2001.

We received comments from the following six sources:

—One trade association with members affected by this rulemaking:
American Petroleum Association (API)
—Three individual liquid pipeline operators:
Tosco Corporation
Chevron Pipe Line Company
Colonial Pipeline Company
—One operator not directly affected by this rulemaking:
Enron Transportation Services Company (natural gas transmission)
—One Engineering company:
SEFBO Pipeline Bridge, Inc.

SEFBO did not comment directly on the repair provisions but expressed its support for pipeline integrity management programs and stressed the importance of considering safety issues relating to the support structures used by pipelines to cross high consequence and other sensitive areas.

Some of the comments we received about the repair provisions also addressed other portions of the final rule. As we only requested comment on the repair provisions in paragraph (h), this document will focus on those comments. If at some point we determine that substantive revisions to the final rule are necessary and we propose changes, we will then consider those comments.

Comments on Section 195.452(h)—''What actions must be taken to address integrity issues?''

1. General comments about paragraph (h):

API objected to use of the word repair throughout paragraph (h). API contended the exclusive focus of the rule on repairs undermined the holistic approach of the rule. API commented that a key principle throughout the rule is the integration of information, so appropriate mitigative actions can be taken based on a comprehensive assessment. API explained that although actions may consist of repair, other actions such as further testing and evaluation, environmental changes, operational changes, or administrative changes could be appropriate. API advised that the goal should be to ensure operators differentiate defects injurious to a pipeline's integrity from those that are not.

Tosco also commented that requiring repair in all instances was too inflexible, and operators must have the flexibility to address a wide range of conditions.

Response:

To assure the integrity of pipeline segments that could affect high consequence areas, Section 195.452 requires an operator to conduct a variety of assessments. The assessments include baseline and continual integrity assessments of the line pipe and periodic evaluations of entire pipeline systems, to assure the integrity of pipeline segments that could affect high consequence areas. This is accomplished through the continual identification and remediation of potential problems. We agree the word ''repair'' in paragraph (h) might be too narrow to encompass the range of actions an operator could take to address a problem. We intended paragraph (h) to reflect the broader actions an operator must take to address integrity issues that are identified. We further agree that all anomalies identified by an integrity assessment or information analysis might not require repair. Therefore, we replaced the word repair with remediate throughout paragraph (h). Remediate can encompass a broad range of actions, which include mitigative measures as well as repair, that an operator can take to resolve a potential integrity concern. Although we firmly believe repair is necessary to address many anomalies, we recognize repair may not be necessary in all instances. The rule provides the operator flexibility to determine the most appropriate action to take. However, we added language to ensure that whatever action is taken by an operator, it must be adequate to resolve the integrity concern on the pipeline for the long term. We also added a requirement that when an operator chooses to remediate a condition through a reduction in operating pressure, the pressure reduction is not to extend beyond 365 days without the operator taking further action to ensure the safety of the pipeline.

2. Section 195.452(h)(1)—General Requirements: In this paragraph we required an operator to take prompt action to address all pipeline integrity issues raised by the integrity assessment and information analysis, and evaluate all anomalies and repair those that could reduce a pipeline's integrity. An operator was further required to follow § 195.422 in making a repair.

API objected to the words ''prompt'' and ''all'' because these words could be interpreted in their absolute sense; could cause confusion because of the required time frames for addressing certain conditions; and could lead inspectors to require operators to take costly actions to address insignificant anomalies. API recommended deleting these terms.

Tosco suggested the rule only require an operator to comply with § 195.22 when a repair is necessary.

Response:

As explained in the previous section, we replaced ''repair'' with ''remediate'' throughout paragraph (h), allowing for actions other than repair, in order to address integrity threatening pipeline conditions. This will allow an operator flexibility in how to address anomalous conditions on its pipeline.

We did not delete the terms ''prompt'' and ''all.'' The pipeline safety regulations have long incorporated the term ''prompt,'' with consistent enforcement; there is little disagreement between operators and inspectors about its meaning. For the listed conditions, we determined what a prompt time frame should be (viz., immediate, 60 days, 180 days), but leave it to the operator to determine appropriate time frames for other conditions. We kept the word ''all'' because it is a reasonable requirement for an operator to evaluate all conditions indicated by an integrity assessment or the information analysis, in order to determine the significance of each concern. Upon evaluation of the condition, the operator can then determine the appropriate further action to take, if any. We revised the language to clarify that an operator must evaluate all anomalous conditions (i.e., any condition that is irregular, abnormal, deviates from the norm, etc.) and remediate those conditions that could reduce the integrity of a pipeline.

The word ''address'' is used in the introductory paragraph to encompass the process an operator should go through to find and remedy anomalous conditions, i.e., discovery, evaluation, and remediation of the condition through repair or other mitigative action. Using language to capture the process, is consistent with API's comment about the intended goal of the rule. By having an operator address all anomalous conditions raised by the integrity assessment or the information analysis, we envision a process that begins with discovery of a condition or anomaly that poses an integrity concern to the pipeline; continues with an evaluation that includes the analysis of other relevant data about the pipeline (this analysis could also be part of the discovery); and concludes with fixing the problem.

We did not add ''if necessary,'' to the requirement about complying with

§ 195.422, as suggested by Tosco. The rule now uses the word remediate, which should alleviate any confusion about when compliance with § 195.422 is necessary. Section 195.422 applies only to repairs. If actions other than repair are taken, the requirements in the section do not apply.

3. Section 195.452(h)(2)—Discovery of a condition.

The discovery of a condition triggers the time frames (either required by the rule or the operator's schedule) for remediating the condition. We defined discovery as occurring when an operator has adequate information to determine the need for a repair, and we provided examples of when such information might be available, depending on the circumstances. The examples included the receipt of the preliminary internal inspection report, the gathering and integrating of other inspection information, and the receipt of the final internal inspection report. The date of discovery could be no later than the date of the integrity assessment results or the final report.

API objected to tying discovery to a specific point in time because discovery is not usually a single event but occurs over time as information is analyzed. API commented that other provisions of the Integrity Management rule require operators to integrate information from various sources, and tying the date of discovery to the date of the integrity results or receipt of the final report is inconsistent with the concept of integrating data. API maintained that too much emphasis is put on the use of internal inspection tools and the data collected from running these tools through a pipeline. API also commented that the emphasis on the results of in-line inspections in determining what action must be taken, is inappropriate and inconsistent with the rule's intent for information from multiple sources to be integrated in the assessment process. API suggested that rather than tying discovery to the integrity assessment results or final report, discovery should occur when an operator has integrated other inspections, tests, surveillance, controls, or pipeline integrity data with the final inspection report from an in-line inspection vendor or hydrostatic test. API believes this integration should be completed within 90 days from the receipt of the final inspection report.

Tosco expressed similar concerns and suggested the word ''discovery'' not be used, since it has the common meaning of when something is first found and might cause confusion with how the term is used in § 195.56. Instead, Tosco would tie the repair schedules to the determination that a condition requires mitigation, which would be an outcome of the ongoing assessment process.

Chevron also believed it is inappropriate to tie discovery to a specific event because discovery is a process that is subject to change with new information. Chevron suggested language changes identical to those recommended by API.

Response:

We contend that discovery triggers an operator's process to address a condition that could affect the integrity of a pipeline. Therefore, discovery has to occur at a specific point in time to start the period for evaluation and remediation of the condition. The use of the word ''discovery'' here is consistent with how the word has been used in other pipeline safety regulation. However, to allow flexibility the rule provides that the time of discovery can vary depending on circumstances, and does not define discovery to occur at the same time for every operator and every pipeline.

Discovery will depend on circumstances. We revised the rule to provide that discovery occurs when an operator has adequate information about a condition to determine the condition presents a potential threat to the integrity of the pipeline. The ''when'' for an operator to have sufficient information to make a determination will not be the same for every operator and every pipeline. Although the examples in paragraph (h) provide circumstances when discovery might occur, they were intended only as examples. We decided to eliminate the list as it is not exhaustive and may cause confusion. We did keep the performance-based standard to give an operator flexibility when deciding there is adequate information to determine a condition presents a potential threat to its pipeline. However, we put an upper limit on the length of the discovery process. An operator must promptly obtain the information from an assessment to ensure that remediation of a condition which could threaten a pipeline's integrity occurs soon after an integrity assessment. The discovery process (the process for obtaining the adequate information) will end 180 days after an integrity assessment unless an operator can demonstrate that the 180-day period is impracticable.

4. Section 195.452(h)(3)—Review of integrity assessment:

This paragraph, as proposed, required an operator to include in its schedule for evaluation and repair a schedule for promptly reviewing and analyzing integrity assessment results. After March 31, 2004, an operator's schedule had to provide for this review within 120 days of conducting each assessment. The operator also had to obtain and assess a final report within an additional 90 days.

API objected to setting a fixed period for the review of integrity assessment results. API commented that the language confused the role of the vendor who conducts a specific test or provides interpretive results, with the operator who conducts the integrity assessment and uses information from sources other than in-line inspections in performing those assessments. API explained that an operator contracts with the vendor for a specific service that is part of an overall integrity assessment.

API also expressed concern that increased demand for inspection services would likely affect the time in which tool vendors deliver the reports. API stated that it is unlikely that operators will be able to meet the deadlines for every tool run and for every type of tool, as many types of tools are on the leading edge of development. API suggested that the rule: require review of integrity tests and inspections (rather than assessments); provide for integrating other appropriate data with the inspection/test results; and allow for a delay in schedule beyond the specified deadlines as long as an operator provides a reasonable explanation for the delay.

Tosco commented that the two separate time periods is confusing; that if assessment of inspection results must be accomplished within 120 days, it is not clear what additional evaluation is required within 90 days of obtaining the report of an inspection.

Response: We wish to note: an integrity assessment should not be confused with an integrity management program. Integrity management applies to the entire pipeline. It is a process that uses the information from an integrity assessment, in conjunction with the periodic evaluation and information analysis, to better manage the risks posed to each pipeline segment that could affect a high consequence area. Assessment is only one part of an operator's integrity management program and applies only to the line pipe. In the integrity management rule an assessment is required as a baseline and then required, periodically, every five years to ascertain the condition of the line pipe in each pipeline segment that could affect a high consequence area. To perform this assessment an operator has a choice of technologies: hydrostatic testing; internal inspection devices; or other technology. The rule clearly states that it is the operator's

responsibility to perform the required baseline and periodic assessments.

Integration of information is a critical part of an operator's integrity management program. An operator must conduct periodic evaluations, which are to include evaluating data from the information analysis. The evaluations must be conducted as frequently as needed to assure pipeline integrity, not just when an assessment is done. Thus, the rule leaves it to each operator to best determine the frequency for evaluating its pipelines. We further expect an operator to structure its program to bring the necessary information together at the appropriate time.

The requirement that an operator obtain and analyze an integrity assessment report by a specified time was intended to prompt an operator to obtain a timely report so that it could begin the repair of pipeline integrity-threatening conditions. However, after further analysis of this requirement we believe its implementation would be confusing and likely result in endless disagreements between operators and enforcement personnel. For example, an operator might have a condition on its pipeline that falls into the 60-day category. It could be argued that discovery occurred when the operator received a preliminary report of its integrity assessment, and that the operator was required to remediate the condition within 60 days after it received the report. However, the operator is supposed to have 120 days to review and analyze a preliminary report. Thus, there could be disagreement over whether the 60-day requirement negated the period for review and analysis, or whether the period for initial review and analysis gave the operator an additional 120 days before it was required to remediate the condition.

Furthermore, we realized that the intent of this provision is to ensure an operator promptly addresses anomalous conditions on its pipeline, not to create disagreements about when an operator receives a report, reviews the report, and whether the report was a preliminary or final report.

Rather than create a potential compliance and enforcement nightmare, we eliminated this provision from paragraph (h). Instead, we rewrote the provision (see discussion on discovery above) to give the operator flexibility in what information it uses, and what analysis it needs to discover a condition. Now an operator must promptly obtain sufficient information about a condition to make the determination that the condition presents a potential threat to the integrity of the pipeline. However, the obtaining of this information can take no longer than 180 days after an integrity assessment. 180 days after an integrity assessment, is considered sufficient time for an operator to obtain a report and any other information the operator needs to determine that a condition may present a threat. In limited instances, an operator may be able to demonstrate that the 180-day period is impracticable.

By having a performance-based requirement, yet establishing an upper limit on when discovery can occur, it should be clearer to an operator on how to comply. It should also be clearer to determine when there is a violation, for enforcement purposes.

The revised provisions ensure that an operator takes prompt action following an integrity assessment to remediate anomalous conditions and encourage operators to use sophisticated and developing technologies, because the operator will not be dependent on the report from the vendor.

5. Section 195.452(h)(4)—Schedule for repairs: This paragraph required an operator to complete repairs according to a schedule that prioritizes conditions for evaluation and repair. The schedule was based on risk factors used for establishing the baseline and continual integrity assessment schedules. An operator would be allowed to notify RSPA/OPS when it could not meet the schedule and provide a justification for the delay. Notice was to be sent to the address in § 195.58 or to the facsimile number in § 195.56.

API recommended the reference to the risk factors be deleted because the factors are appropriate for establishing re-inspection intervals but not for prioritizing mitigative actions.

Tosco questioned, in the event an operator could not meet its schedule, whether the notification required should also be sent to the appropriate State agency in those States that are certified under Section 60105 of the Federal Pipeline Safety Statute. Tosco also noted that because § 195.58 applies to subpart B and § 195.56 applies to Safety Related Condition reports, we should reference the integrity management notification in these sections.

Response:

It is likely the results of an integrity assessment will be the principal basis for scheduling a condition for remediation. These results will generally indicate the significance of anomalies so operators can establish their relative importance for remediation. However, RSPA recognizes that there may be other factors an operator needs to consider in prioritizing the conditions for remediation, and agrees that requiring an operator to base its schedule on risk factors is unnecessary. We deleted this requirement from the rule and will leave it to the operator to determine how best to set up a schedule for evaluation and remediation of conditions identified from the assessment. Of course, an operator must document the basis for how it prioritizes conditions in its schedule.

As for where an operator is to send a notification when it is unable to meet its schedule, the language clearly provides the address and facsimile numbers for sending the notification. Although we see no reason for confusion about where to send a notification, we added a new paragraph (m) to the integrity management rule that contains the address and facsimile number for sending notification. This paragraph now contains the current room number and facsimile number for sending any notification required by § 195.452.

The rule continues to require operator notification to RSPA/OPS. We will then ensure that the relevant Regional office receives the notification for forwarding to a certified State. Having the notification come to RSPA is consistent with the filing of other reports, such as the safety-related condition report and accident report. As RSPA plans to keep a data base of notifications, it is most practicable for it to be the notified agency rather than State safety agencies. It also prevents a burden to operators of trying to determine which agencies should be notified. Requiring all notifications under the Integrity Management rule first come to RSPA/OPS, eliminates any potential confusion about where a notification should be sent.

When a certified State adopts the integrity management regulations, it may also add a requirement for notification by intrastate hazardous liquid operators.

6. Section 195.452(h)(5)—Special requirements for scheduling repairs:

This paragraph provided a list of certain conditions that require either immediate repair, repair within 60 days, or repair within six months. This paragraph also listed other conditions an operator would be required to evaluate and repair, but did not specify the time frame.

Although not directly affected by this rulemaking, Enron maintained that the prescriptive time frames for certain conditions were not appropriate for the conditions, forcing operators to seek extensions. Enron further commented

that the descriptions of the conditions were open to interpretation.

Immediate repair conditions: This subparagraph provided a list of conditions that require immediate repair. An operator is further required to temporarily reduce operating pressure or shut down the pipeline until the operator could complete the repair, basing the temporary operating pressure reduction on remaining wall thickness.

API acknowledged that the conditions we listed as immediate repair conditions are those where the indicated anomaly may suggest the potential for imminent failure. However, API objected to limiting an operator's actions to address these conditions to repair of the condition. API recommended renaming these immediate concern conditions, and allowing an operator to take actions other than repair. API gave the example of a pipeline over-designed for wall thickness, as able to remain in service at very low pressure and not subject to imminent failure, even with metal loss greater than 80 percent of nominal wall thickness.

API further stated that limiting an operator's discretion on reducing operating pressure to remaining wall thickness may be inappropriate in many situations (e.g., dents with indicated metal loss) and supported by engineering calculations. API suggested that the original wall thickness in some pipelines may have been above that needed to contain current maximum operating pressure, and recommended basing pressure reduction on an engineering assessment that includes all the potential factors that may contribute to pressure containment.

Chevron recommended we remove the condition of ''dents on the top of the pipeline with any indicated metal loss'' from the immediate repair category. Chevron agreed such dents may be serious, but contended there is insufficient data to prove that these types of anomalies are of immediate concern. Chevron also believed an immediate repair requirement related to such anomalies would be difficult to meet because corrosion internal inspection tools do not always identify such dents, and those vendors that claim the tools can identify such dents cannot correctly size and identify them. Chevron recommended we place these types of anomalies in the 60-day category, and reword the anomaly description to include known topside dents that exceed 6 percent of the nominal pipe diameter with any (emphasis in the original comments) indicated metal wall loss. In addition, Chevron recommended RSPA work with industry to develop a pressure calculation that will determine the level of pressure reduction required (dependent on the size of the dent) to operate the pipeline safely.

Response:

We allowed an operator latitude in how it addresses most conditions, by changing the word repair to remediate throughout paragraph (h). However, we firmly believe that certain conditions, due to the immediate threat they pose to a pipeline's integrity and to a high consequence area, are best addressed by repair. We continue to list these conditions as ''Immediate repair conditions.'' An operator must repair these conditions; and until the repair is completed, either reduce operating pressure or shut down the pipeline.

We agree that a situation might exist where an over designed pipe segment operating at a lower pressure could withstand maximum operating pressure, even with 80% wall loss. However, we find it unacceptable for an operator not to immediately repair a segment of pipeline where less than 20 percent of original wall thickness remains. Wall loss exceeding 80% indicates something significant is occurring on the pipeline.

We also do not agree with Chevron's suggestion that ''dents on top of the pipeline with indicated metal loss'' do not require immediate repair because they are hard to identify. We acknowledge current inspection techniques may not readily identify dents with metal loss. The rule does not require an operator to identify such conditions. The rule simply specifies that when such conditions are identified, an operator must repair them immediately. This type of dent is also classified as an immediate concern in the most recent draft of API–1160, ''Managing System Integrity for Hazardous Liquid Pipelines.'' Therefore, we are not removing this condition from the list of immediate repair conditions.

The reduction in operating pressure, or the shutdown of the pipeline, provides an additional margin of safety. This requirement is consistent with § 195.401(b). This established regulation requires an operator to correct conditions that could adversely affect safe operations in a reasonable time and not operate the affected part of the system until the condition is corrected, if it is of such a nature that it presents an immediate hazard to persons or property.

We agree that pressure reductions should be based on an engineering evaluation, and changed the final rule accordingly. Although it is appropriate to base the pressure reduction on the remaining wall thickness for corrosion, this may not be the best method on which to base a pressure reduction for dents and gouges. We modified the requirement so that an operator must calculate the temporary reduction in the operating pressure using the formula in section 451.7 of ASME/ANSI B31.4.

In response to concerns about the rule confusing the role of vendors with that of operators, we clarified the language in one of the listed conditions concerning the person responsible for making certain determinations about a condition. We revised the language so that now it is the person designated by the operator to evaluate assessment results, who is to determine whether an anomaly requires immediate action.

60-day conditions:

As proposed, this paragraph required an operator to schedule for evaluation and repair all dents (other than those listed as immediate repair conditions), regardless of size, located on the top of the pipeline (above the 4 and 8 o'clock position) within 60 days of discovery of the condition.

API agreed with placing special emphasis on investigating anomalies that represent potential excavation damage on the top of the pipe. However, API contended that requiring repair of any topside dent, regardless of size, would preclude operators from making appropriate engineering judgments about anomalies that differ in character and risk profile from one pipeline to another.

API contended that increasing sensitivities of inspection tools could result in ''hundreds or even thousands'' of topside line indications, only some of which will be a result of third-party damage. (Colonial and Chevron made the same comment). To better focus resources on areas of highest risk, API recommended we specify dents that are in excess of three percent of pipeline diameter and are located in a high population or other populated area, as 60-day conditions and include remaining dent-type defects as 6-month conditions. API believes this conservatively reduces by half the ASME B31.4 provisions, which require removal or repair of dents exceeding a depth of six percent of nominal diameter. API explained that the focus on high population areas and populated areas is appropriate because third-party activity is more likely to occur in these areas. (Chevron recommended these same changes). API further recommended excluding dents less than 0.25 inches for small diameter pipe (less than NPS 12) to recognize mill imperfections that fall within manufacturing tolerances. API maintained that operators have

conducted verification digs on many such small defects identified by past in-line inspections to demonstrate that these indications do not threaten pipeline integrity.

Colonial reported in its experience, in-line inspection identified hundreds of bending shoe marks, smooth dents, and minor mill imperfections that fall within manufacturing tolerances. However, Colonial found these indications to be neither injurious to the pipeline nor the result of third-party damage. Colonial suggested that increased focus on these indications would result in dilution of resources and diversion of attention from higher risks. Colonial recommended we exclude ''smooth dents, bending anomalies, and mill defects that may be identified through engineering analysis and data integration including data gathered from previous excavations and inspections.''

Chevron recommended we limit the 60-day conditions to known topside dents in excess of six percent of the nominal pipe diameter with any indicated metal loss, and that occur within a high population area or other populated area.

Tosco would not limit the 60-day conditions to topside dents. Tosco explained that an operator must also evaluate dents located at the bottom of the pipe because they may indicate that the pipe has been damaged by lifting the line with excavation equipment.

Response:

Although commenters expressed concern about internal inspection tools not being able to detect immediate repair conditions, they also expressed concern about the tools finding too many of the 60-day conditions. We reconsidered what conditions an operator should address within 60 days from discovery. We decided to limit those conditions to large dents (i.e., those dents in excess of three percent of pipeline diameter) on the top of the pipeline and to dents on the bottom of the pipeline that contain stress concentrators because these types of dents are more likely to impair the integrity of the pipeline. We want the rule to encourage the use of more sophisticated inspection tools, as these tools become available. By modifying the list of 60-day conditions so that operators can better focus resources on remediating those conditions most likely to pose a threat to the integrity of a pipeline and to a high consequence area, operators will be encouraged to use more sensitive tools.

We do not agree that the 60-day conditions should be limited to conditions found in high-population and populated areas. While it may be possible that third-party damage is more likely to occur in these areas, such damage can also occur in other areas. There is no reason why third party damage to a pipeline in an unusually sensitive environmental area should not be addressed as promptly as third party damage to a pipeline in another high consequence area. We make no distinction in the final rule between dents identified in populated areas and dents identified in other areas defined as high consequence.

We did not make the change suggested by Tosco to include all dents located on the bottom of the pipe. We recognize that excavation damage limited to the bottom of pipe can occur, but understands it to be much less prevalent. However, we included under the 60-day conditions dents located on the bottom of the pipeline that have other indicators of damage, such as evidence of cracks or stress risers within the dent that would indicate a need for more immediate action. Significant dents (i.e., those dents with a depth greater than six percent of the pipe's diameter) on the bottom of pipe would require remediation within 180 days of discovery. An operator must also evaluate and remediate any other dents on the bottom of the pipeline within a reasonable time.

Six-month conditions: This paragraph listed several conditions an operator would have to schedule for evaluation and repair within six months following discovery.

API recommended the list of 6-month conditions be completely rewritten and offered changes it believes use technically sound descriptions of the potential anomalies. API's revisions include the concept of minimum detection limits, particularly with respect to dent-type anomalies. API claimed this would prevent the inappropriate diversion of safety resources that could result from a requirement to address ''all dents, regardless of size'' as detection capabilities increase. API echoed the comments of Colonial, discussed above, that in-line inspection companies have identified imperfections that fall within manufacturing tolerances and operators have conducted many verifying digs to demonstrate that these anomalies do not affect pipeline integrity. Colonial's comments in that regard are applicable also.

Chevron also recommended a complete rewrite of the six-month conditions for the same reasons as API, and proposed language substantially the same as API's. Differences exist in addressing situations in which ''predicted burst pressure'' is less than established maximum operating pressure (API uses the term ''safe operating pressure''). API would limit the need to evaluate metal loss located at foreign pipeline crossings, to instances with greater than 50 percent wall loss, while Chevron would address those with greater than 30 percent wall loss.

Enron also commented that several of the listed conditions could require an expensive, time consuming, and non-productive diversion of safety resources. Enron believed evaluating dents with metal loss or dents affecting pipe curvature at a girth or seam weld, could result in numerous excavations. Many in-line inspection devices cannot identify such seams and having to investigate such dents, regardless of their depth, could require significant resources for little safety benefit. Enron raised the same concern regarding the need for unnecessary physical inspections to evaluate and repair corrosion of or along seam welds. Enron suggested that the six-month conditions only specify narrow axial external corrosion. Enron commented that the rule did not appear to allow pressure reduction as an option for addressing areas of general corrosion with predicted metal loss of greater than 50 percent of wall thickness.

Response:

To be consistent in language throughout paragraph (h), we now list the six-month conditions as 180-day conditions. We re-categorized some of the dents listed as 60-day conditions into the 180-day category because they are less severe. To avoid including minor and non integrity-threatening dents that fall within manufacturing tolerance limits, we revised the list of conditions to include dents greater than two percent of pipe diameter. The 180-day conditions category is consistent with the most recent draft of API–1160, ''Managing System Integrity for Hazardous Liquid Pipelines,'' except for minor differences. We included gouges and grooves greater than 12.5 percent of wall thickness, which are not in the API–1160 draft.

Enron's concern regarding potential diversion of resources to address dents affecting seam welds was based on the perception that an operator would need to excavate most, or all dents to determine if they impacted a seam weld (similar logic underlies Enron's concern about the need to investigate corrosion along seam welds). We do not intend to require an excavation in order to identify the location of welds. We clarified the final rule to eliminate

confusion by setting de-minimus values for certain dents.

We also clarified an apparent inconsistency in which we listed weld anomalies with predicted metal loss greater than 50 percent of wall thickness and corrosion of or along seam welds as 6-month conditions. We deleted from the list weld anomalies with a predicted metal loss greater than 50% of nominal wall. The rule now lists as 180-day conditions corrosion of and along a longitudinal seam weld, and metal loss greater than 50% that can affect a girth weld.

Other conditions: Paragraph (h) also listed examples of other conditions an operator would need to schedule for evaluation and repair. API recommended we eliminate this paragraph as they contended it is unworkable and unenforceable. Many of the listed conditions, according to API, are not pipeline conditions but describe characteristics of the conditions as they might appear in raw inspection data. API argued that this paragraph oversimplifies the task of using past data in evaluations.

Tosco also commented that the listed conditions seem to relate to an assessment using internal inspection tools, and conditions identified by other means of assessment (e.g., direct assessment) might not be addressed if this list were considered exhaustive.

Enron commented that because the list of other conditions contain vague descriptions (e.g., over a large area, abrupt in nature, reflect a change, near casings), compliance with and enforcement of these requirements will be arbitrary, inconsistent and result in numerous disagreements between operators and regulators. As an example, Enron explained that a strict interpretation of the requirement requiring an operator to evaluate data that reflect changes since the last internal inspection, could include any change, no matter how small, or even one indicating an improvement. Enron argued for us to allow operators a reasonable degree of latitude in making decisions regarding what conditions must be evaluated, and requested we provide guidance in the rule on this latitude and not develop it through enforcement and interpretation. Finally, Enron maintained the repair requirements are likely to result in differing interpretations by different regulatory agencies.

Response:

The paragraph listing other conditions is not intended as an exhaustive list, but simply a list of some of the conditions an operator was to address in its schedule. We wrote paragraph (h), as well as other provisions of section 195.452, to include performance-based and, when necessary, prescriptive language. The rule tries to balance the need of an operator for flexibility with the need for clear and enforceable regulations.

Although we strive for clarity in a regulation, language is an imprecise instrument and is invariably subject to different interpretations. We face this challenge in every rulemaking, yet we enforce the regulations with a modicum of difficulty. Nonetheless, in response to the comments, we modified the list of other conditions to give better descriptions of certain conditions an operator should address, and we relocated the list to Appendix C. This list will now offer guidance to operators on conditions they should be prepared to evaluate and remediate. An operator will now be required to evaluate and remediate conditions other than those listed as immediate repair, 60-day, and 180-day conditions, and in so doing to consider the guidance provided in Appendix C.

Again, we want to emphasize that the conditions listed as immediate repair, 60 day, and 180-day are not an exclusive list of conditions an operator will be required to evaluate and remediate. These are simply some of the conditions that may show up. The argument that because a condition was not listed in paragraph (h) or in the Appendix C guidance and so an operator did not know it was required to evaluate and remediate the condition, will never be accepted.

Comments on other provisions in the final rule:

The Integrity Management Rule issued on December 1, 2000, was a final rule. We only sought comment on the repair provisions in paragraph (h) due to the substantive changes made from those initially proposed. All other provisions of the rule were previously subject to notice and comment. Therefore, we will not address comments aimed at other provisions in the rule, in this document.

Paragraph (h) Requirements

Paragraph (h) of § 195.452 requires an operator to take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis. Addressing all conditions means an operator must evaluate all anomalous conditions and remediate those which could reduce a pipeline's integrity. The actions an operator may take to remediate a condition include a range of mitigative and other actions, including repair. However, the action taken must be adequate to ensure the condition is unlikely to present a long-term threat to the integrity of the pipeline.

The time frames for evaluating and remediating certain conditions begin when the condition is discovered. Discovery of a condition occurs when an operator has adequate information to determine a condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make the determination that a condition presents a potential threat to the integrity of the pipeline. Thus, an operator has flexibility determining when it has sufficient information for discovery. However, the discovery process will end 180 days after an integrity assessment, unless the operator can demonstrate that the 180-day period is impracticable.

Discovery triggers the time frames for remediating a condition. An operator must have a schedule providing time frames for evaluating and completing remedial action on a condition.

For most conditions, it is left to each operator to determine how to prioritize the conditions for evaluation and remediation. An operator must be able to justify its prioritization. The rule provides the time frames in which an operator must complete repair or remediation of certain conditions. These are listed as immediate repair conditions, 60-day conditions and 180-day conditions. Of course, the rule cannot identify all conditions an operator will have to evaluate and remediate. A condition an operator discovers may qualify as an immediate repair, 60-day or 180-day condition, even though it is not listed in the rule. The rule simply provides common examples of such conditions.

The rule further provides that an operator is to include in its schedule, conditions other than those listed. Example of some conditions that could show up during an integrity assessment are provided in the Appendix C guidance. The list in the Appendix is not an exhaustive list.

An operator may deviate from the scheduled time frames for remediation of a condition, if the operator justifies the reasons why it cannot meet the schedule and the changed schedule will not jeopardize public safety or environmental protection. An operator's justification for a deviation would be one of the records the operator is required to maintain for inspection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary

reduction in operating pressure. The operator would be required to provide RSPA/OPS notice by mail or facsimile.

Corrections to Section 195.452

The rule allowed two limited exceptions for when an operator could seek a variance from the five-year re-assessment intervals. One exception (paragraph (j)(4)(i)) is if an operator can justify, on an engineering basis, for a longer assessment interval. Among other requirements, an operator is to support the justification with the use of other technology that provides an understanding of the line pipe equivalent to that provided by the other allowable assessment methods. However, instead of referencing the assessment methods listed in paragraph (j)(5), the rule incorrectly referenced (j)(2), the paragraph addressing the periodic evaluation. We corrected the reference.

The second exception (paragraph (j)(4)(ii)) allows a variance because of unavailable sophisticated technology. For this exception an operator is to notify OPS 180 days before the end of the five-year interval. However, the rule further provided that an operator would then have to complete the assessment within 180 days. This requirement was incorrectly included and we deleted it. If an operator has to complete the re-assessment within 180 days of its 180-day notice, the operator would be completing the re-assessment within the five-year period. Therefore, with this requirement the exception allowing an extension is illusory. We deleted the requirement and instead, now specify that with its notice, an operator is to provide an estimate of when it will complete the re-assessment.

Advance notice to OPS is required before an operator conducts a continual integrity assessment using alternative technology. Paragraph (j) (5) (iii) of the final rule gave this period as 60 days. This was incorrect. The advance notification period should be 90 days, to be consistent with the advance notification period required when an operator uses alternative technology for the baseline assessment. We corrected the time period.

In paragraph (l), we inadvertently left out the number (1) before the first paragraph. We corrected this oversight.

We also corrected the grammar in several places in the Appendix C guidance.

Clarifications and Non-Substantive Revisions to Section 195.452

In paragraph (a) we clarified that the rule applies to any operator who owns or operates 500 or more miles of hazardous liquid or carbon dioxide pipeline. When we wrote the paragraph describing which operators need comply with the rule, we intended for the phrase ''hazardous liquid'' to include carbon dioxide pipelines. However, we have since realized that because of how hazardous liquid and carbon dioxide are used in other pipeline safety regulations, there may be confusion about whether carbon dioxide lines are included. By changing the language to ''hazardous liquid or carbon dioxide,'' we eliminate any confusion about which operators are to comply.

In paragraphs (c)(1)(i) and (j)(5), questions were raised about the listed methods an operator is allowed to use for an integrity assessment. The questions concerned the application of the methods to low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure. We revised these paragraphs to make clear that the listed assessment methods apply to these types of pipe. Although for these types of pipe, an operator must choose methods that have certain capabilities, and the methods are to be from those listed in the rule.

In paragraph (j)(2) we clarified that the evaluation of assessment results include results from the baseline or periodic integrity assessments. Although an operator may have performed a previous internal inspection, unless the operator uses that as its baseline assessment the operator would not have had to maintain those records because the pipeline safety regulations did not require an internal inspection. This clarification should avoid any disagreement about which integrity assessment records an operator will need for its periodic evaluations.

In paragraph (j)(4)(i), we clarified the language about the requirements for the justification for a variance from the 5-year re-assessment interval for engineering reasons and the requirements for notification to OPS.

Due to changes we made to the terminology in paragraph (h), we revised several other paragraphs of the rule and Appendix C to be consistent with those changes. Affected paragraphs in § 195.452 are (f)(4) and (j)(2), and in Appendix C, VI (16) and VI(18).

We added a new paragraph (paragraph m) to the rule to clarify that the required notification must be sent to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington DC 20590, or to the facsimile number (202) 366–7128. Notification is required when an operator cannot meet its schedule for evaluating and remediating anomalous conditions; uses alternative technology for an integrity assessment; or seeks a variance from the five-year continual assessment interval.

In Appendix C, which contains guidance material for § 195.452, we added a section on conditions other than those listed in paragraph (h), which an operator could find from an integrity assessment and an operator should consider in its schedule for evaluation and remediation. We initially listed these conditions in paragraph (h) but decided they more appropriately fit into the Appendix C guidance. This guidance does not list every possible condition that could arise on a pipeline and an operator should evaluate. We also revised the introductory paragraph to reference the new section.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is not considered a significant regulatory action under section 3(f) of Executive Order (58 FR 51735: October 4, 1993). Therefore, the Office of Management and Budget did not review this rulemaking document.

We sought public comment on any additional financial burden that the repair requirements would have on the hazardous liquid pipeline industry. A supplemental report to the regulatory evaluation to address this issue is placed in the docket. The seven members present at the August 13, 2001, Technical Hazardous Pipeline Safety Standards committee meeting voted unanimously to accept the supplement to the regulatory evaluation. Below is a summary of their supplemental report.

Treatment of Repairs in Cost-Benefit Analysis for the Integrity Management Rule

The final regulatory evaluation supporting the integrity management rule did not estimate the costs associated with repairs to pipe that may occur as a result of the rule. The evaluation instead focused on the costs associated with the planning and integrity assessments required by the rule. The reasons for not evaluating repair costs were:

1. The pipeline safety regulations have always required an operator to repair problems found on its hazardous liquid or carbon dioxide pipelines. (49 CFR 195.401(b)). The primary changes made by the Integrity Management rule were to establish a systematized assessment and evaluation process that

would cause operators to better identify conditions on their pipelines requiring repair. Thus, the additional effort required of operators by the rule is in the planning and assessment process, the costs of which were considered in the regulatory evaluation. Repair of a problem, once it is known, was not a new requirement and was not evaluated because of the assumption that additional costs would not be incurred.

2. The repair criteria in paragraph (h) of the final rule (65 FR 75378; December 1, 2000) were changed from those published with the proposed rule. Accordingly, public comments were solicited regarding the repair criteria. RSPA received comments from six organizations (one trade association, one engineering company, three operators directly affected by the rule, and one operator not directly affected by the rulemaking). None commented on the lack of specific reference to repair costs in the regulatory evaluation.

3. Some commenters identified criteria they believed would require unnecessary excavation and evaluation of minor pipeline anomalies that would not affect a pipeline's integrity. We made changes to the provisions in paragraph (h) in response to these comments. These changes clarify the types of conditions an operator must evaluate and remediate so the focus will be on those conditions that are most likely to affect pipeline integrity. Moreover, the remediation requirements allow an operator flexibility in the action it takes to address a condition that poses a threat to the integrity of its pipeline. These provisions are consistent with the existing requirements in section 195.401(b), and add no additional costs.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This rulemaking was designed to impact only those operators that own or operate 500 or more miles of hazardous liquid or carbon dioxide pipeline. Because of this limitation on pipeline mileage, only 66 hazardous liquid pipeline operators (large national energy companies) covering 86.7% of regulated liquid transmission lines are impacted by this final rule. Based on this, and the evidence discussed above, I certify that paragraph (h) in the final rule addressing the remedial actions an operator is required to take to address integrity concerns on its pipeline will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The pipeline integrity management rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department of Transportation submitted a copy of the Paperwork Reduction Act Analysis to the Office of Management and Budget for its review. The information collection was reviewed and approved by the Office of Management and Budget. The name of the information collection is ''Pipeline Integrity Management in High Consequence Areas.'' The remediation requirements in paragraph (h) of the rule will not add any additional paperwork on hazardous liquid or carbon dioxide pipeline operators as repair requirements must already comply with 49 CFR 195.401(b). This was discussed above in the Regulatory Evaluation section. Therefore, no additional paperwork reduction analysis is necessary.

Executive Order 13084

The remediation provisions of the integrity management final rule were analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments.'') Because these provisions, as well as the other provisions of the final rule, do not significantly or uniquely affect the communities of the Indian tribal governments and do not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

The final rule provisions in paragraph (h) were analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that:

(1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) imposes substantial direct compliance costs on States and local governments; or

(3) preempts state law.

Nonetheless, State public safety representatives were involved throughout the development of the hazardous liquid integrity management rule.

Executive Order 13211

This rulemaking is not a ''significant energy action'' within the meaning of Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

In accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and DOT Order 5610.1D, we prepared an Environmental Assessment (EA) that analyzed the environmental impacts of the rulemaking addressing integrity management programs for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline. In the EA we determined that the rule would not significantly affect the quality of the human environment. The EA and the Finding of No Significant Impact are available in Docket No. RSPA–00–6355. That EA considered the requirements in section 195.452 (h) concerning repairs an operator would have to make to its pipeline following an integrity assessment.

We reviewed the EA in light of the changes we have made to § 195.452 (h), and did not find that any of the changes affected our finding about the environmental impacts of the rule.

List of Subjects in 49 CFR Part 195

Carbon dioxide, High consequence areas, Incorporation by reference, Integrity assurance, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, RSPA is amending part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart F—Operation and Maintenance

* * * * *

Pipeline Integrity Management

2. Section 195.452(a) is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) *Which operators must comply?* This section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid or carbon dioxide pipeline subject to this part.

* * * * *

3. Section 195.452 is amended by revising paragraph (c)(1)(i) introductory text and paragraph (c)(1)(i)(C) to read as follows:

(c) * * *

(1) * * *

(i) The methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

* * * * *

(C) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

* * * * *

4. Section 195.452(f) (4) is revised to read as follows:

(f) * * *

(4) Criteria for remedial actions to address integrity issues raised by the assessment methods and information analysis (see paragraph (h) of this section);

* * * * *

5. Section 195.452 (h) is revised to read as follows:

(h) *What actions must an operator take to address integrity issues?*

(1) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. A reduction in operating pressure cannot exceed 365 days without an operator taking further remedial action to ensure the safety of the pipeline. An operator must comply with § 195.422 when making a repair.

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure. An operator must send the notice to the address specified in paragraph (m) of this section.

(4) *Special requirements for scheduling remediation.*(i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in section 451.7 of ASME/ANSI B31.4 (incorportaed by reference, see § 195.3). An operator must treat the following conditions as immediate repair conditions:

(A) Metal loss greater than 80% of nominal wall regardless of dimensions.

(B) A calculation of the remaining strength of the pipe shows a predicted burst pressure less than the established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G (''Manual for Determining the Remaining Strength of Corroded Pipelines'' (1991) or AGA Pipeline Research Committee Project PR–3–805 (''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or a stress riser.

(D) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 6% of the nominal pipe diameter.

(E) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(ii) *60-day conditions.* Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent located on the bottom of the pipeline that has any indication of metal loss, cracking or a stress riser.

(iii) *180-day conditions.* Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:

(A) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.

(B) A dent located on the top of the pipeline (above 4 and 8 o'clock position) with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12).

(C) A dent located on the bottom of the pipeline with a depth greater than 6% of the pipeline's diameter.

(D) A calculation of the remaining strength of the pipe shows an operating pressure that is less than the current established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G (''Manual for Determining the Remaining Strength of

Corroded Pipelines'' (1991)) or AGA Pipeline Research Committee Project PR–3–805 (''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(E) An area of general corrosion with a predicted metal loss greater than 50% of nominal wall.

(F) Predicted metal loss greater than 50% of nominal wall that is located at a crossing of another pipeline, or is in an area with widespread circumferential corrosion, or is in an area that could affect a girth weld.

(G) A potential crack indication that when excavated is determined to be a crack.

(H) Corrosion of or along a longitudinal seam weld.

(I) A gouge or groove greater than 12.5% of nominal wall.

(iv) *Other conditions.* In addition to the conditions listed in paragraphs (h)(4)(i) through (iii) of this section, an operator must evaluate any condition identified by an integrity assessment or information analysis that could impair the integrity of the pipeline, and as appropriate, schedule the condition for remediation. Appendix C of this part contains guidance concerning other conditions that an operator should evaluate.

* * * * *

6. § 195.452 is amended by revising the last sentence of paragraph (j)(2), revising paragraphs (j)(4), (j)(5) introductory text and (j)(5)(iii), and removing paragraph (j)(6)to read as follows:

(j) * * *

(2) *Evaluation.* * * * . The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

(3) * * *

(4) *Variance from the 5-year intervals in limited situations.*(i) *Engineering basis.* An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which can be obtained from the assessment methods allowed in paragraph (j)(5) of this section. An operator must notify OPS 270 days before the end of the five-year (or less) interval of the justification for a longer interval, and propose an alternative interval. An operator must send the notice to the address specified in paragraph (m) of this section.

(ii) *Unavailable technology.* An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the five-year (or less) interval that the operator may require a longer assessment interval, and provide an estimate of when the assessment can be completed. An operator must send a notice to the address specified in paragraph (m) of this section.

(5) *Assessment methods.* An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

(i) * * *

(ii) * * *

(iii) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

7. Paragraph (k)(1) is redesignated as paragraph (l); paragraph designation ''(1)'' is added after the heading; and paragraph (k)(2) is redesignated as paragraph (l)(2).

* * * * *

8. A new paragraph (m) is added to § 195.452 to read as follows:

(m) *Where does an operator send a notification?* An operator must send any notification required by this section to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW, Washington DC 20590, or to the facsimile number (202) 366–7128.

9. Appendix C is amended by revising the title, adding paragraph (7) in the introductory text, revising paragraphs (7), (8), and (9) of section I.B., removing paragraph (18) from section VI and renumbering paragraphs (19) through (23) as (18) through (22), revising paragraphs (16) and newly designated (18) of section VI, and adding a new Section VII to read as follows:

APPENDIX C TO PART 195—GUIDANCE FOR IMPLEMENTATION OF AN INTEGRITY MANAGEMENT PROGRAM

* * * * *

(7) Types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. * * *

B. * * *

(7) Operating conditions of the pipeline (pressure, flow rate, etc.). Exposure of the pipeline to an operating pressure exceeding the established maximum operating pressure.

(8) The hydraulic gradient of the pipeline.

(9) The diameter of the pipeline, the potential release volume, and the distance between the isolation points.

* * * * *

VI. * * *

(16) integrity assessment results and anomalies found, process for evaluating and remediating anomalies, criteria for remedial actions and actions taken to evaluate and remediate the anomalies;

* * * * *

(18) schedule for evaluation and remediation of anomalies, justification to support deviation from required remediation times;

* * * * *

VII. Conditions that may impair a pipeline's integrity.

Section 195.452(h) requires an operator to evaluate and remediate all pipeline integrity issues raised by the integrity assessment or information analysis. An operator must develop a schedule that prioritizes conditions discovered on the pipeline for evaluation and remediation. The following are some examples of conditions that an operator should schedule for evaluation and remediation.

A. Any change since the previous assessment.

B. Mechanical damage that is located on the top side of the pipe.

C. An anomaly abrupt in nature.

D. An anomaly longitudinal in orientation.

E. An anomaly over a large area.

F. An anomaly located in or near a casing, a crossing of another pipeline, or an area with suspect cathodic protection.

Issued in Washington, DC, on December 21, 2001.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–267 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG07

Endangered and Threatened Wildlife and Plants; Reclassification of *Scutellaria montana* (Large-Flowered Skullcap) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This reclassification is based on the substantial improvement in the species' status. Since listing, when 10 occurrences (10 populations) were known, 74 additional occurrences (for a total of 48 populations) have been discovered, and the total known number of individual plants has increased from about 6,700 to more than 50,000. This final rule implements the Federal protection and recovery provisions for threatened plants, as provided by the Act, to large-flowered skullcap.

EFFECTIVE DATE: This final rule is effective on February 13, 2002.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258–3939 or e-mail at *Allen_Ratzlaff@fws.gov,* or contact Ms. Tyler Sykes at the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee, by phone at 931/528–6481 or e-mail at *Tyler__Sykes@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems that are usually from 30.0 to 50.0 centimeters (cm) (11.7 to 19.5 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1.0 to 2.0 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5.0 to 8.0 cm (2.0 to 3.1 in) long and 3.0 to 5.0 cm (1.2 to 2.0 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a ''modified'' leaf) raceme (simple flowering stalk), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a ''cap'' just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1.0 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near the top of the calyx. Flowering occurs from mid-May to early June, and fruits mature in June and early July.

Bridges (1984) stated, ''The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe.'' *Scutellaria montana* could be confused with other species of Scutellaria. Bridges (1984) also listed some important characters of *Scutellaria montana:* (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart-shaped); (4) a midstem with at least some stipitate (short stemmed) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface; (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman (1878) described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata.* Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins, unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana.*

Cruzan and Vege (in preparation [prep.]) determined that populations southeast of Taylor Ridge in northwest Georgia are genetically distinct and lacked a number of alleles present in populations northwest of Taylor Ridge. This division is supported by analysis of chloroplast DNA variation, which indicates that populations of *Scutellaria montana* are divided into two geographically distinct groups of populations that are probably derived from separate Pleistocene refugia (Cruzan and Ferguson, in prep.).

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata.* The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, Scutellaria pseudoserrata has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular ''velvety'' pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata,* both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate (heart-shaped) leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (*in* Shea and Hogan 1998) observed bees (Apiodea) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and hummingbirds occasionally visiting the plants. The long floral tube (3.0 to 4.0 cm or 1.2 to 1.6 in) and a sucrose-hexose (sugar) ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993).

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Walker, and Whitfield Counties in Georgia; and the Cumberland Plateau Province in Sequatchie, Marion, and Hamilton Counties in Tennessee.

According to Bridges (1984), the geological strata underlying the occurrences of *Scutellaria montana* include most of the major slope-forming formations of the region—shale, chert, limestone, and sandstone from Cambrian to Pennsylvanian in age. Most occurrences in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstone and shale. Most of the

occurrences in the Lookout Mountain portion of the Chickamauga-Chattanooga National Military Park are found on Fort Payne, St. Lewis, Warsaw, Monteagle, and Bangor Formations that underlie the Pennington Formations (McKerrow and Pyne 1993). The Georgia portion of the Ridge and Valley is underlain by Paleozoic rock such as sandstone, shale, and limestone (Lipps and DeSelm 1969). The Georgia occurrences are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins, unpublished). Occurrence elevations range from 189 meters (620 feet) to 562 m (1,844 ft) above sea level.

Most populations occur on colluvial soils (loose deposit of soils accumulated at the base of cliff or slope) over bedrock composed of shale, chert, or limestone. The soils are generally rocky, shallow, well-drained, and slightly acidic. Soil depth ranges from deep to a thin layer, no more than 3.0 cm (1.2 in) deep, over bedrock. In Georgia, the soil is generally stony, shaley, or cherty silt loam or silty clay loam ranging in depth from 0.2 m (8.0 in) to 1.4 m (55.0 in). The average pH is 5.6 and ranges from 4.5 to 6.3 (Collins, unpublished).

Bridges (1984) described the habitat of *Scutellaria montana* as ''* * * rocky, submesic to xeric, well-drained, slightly acidic slope, ravine and stream bottom forests in the Ridge and Valley and Cumberland Plateau provinces of Northwestern Georgia, and adjacent southeastern Tennessee (and probably Alabama).'' Bridges (1984) also listed distinguishing characteristics of the forests where *Scutellaria montana* is found as: (1) A history of some natural pine occurrence; (2) a canopy dominated by oaks and hickories; (3) a mostly deciduous shrub layer with some evergreen *Vaccinium*; (4) a moderately dense herb layer with mesic and xeric species; and (5) occurring on well-consolidated Paleozoic to Precambrian strata, often with some exposed rock.

Forest composition data have been collected on sites in the Marshall Forest and Marion County, Tennessee, populations (Faulkner 1993; Collins, unpublished; Lipps 1966). Data from the sites where *Scutellaria montana* was first studied indicated that it occurred in late-successional forests. Studies of other sites suggest that it is more of a mid-to late-successional species (Bridges 1984; Collins, unpublished; Lipps 1966). At a Marion County, Tennessee, site, Faulkner (1993) observed *Scutellaria montana* persisting in an area where timbering activities had occurred and where the plants had been subjected to low-intensity ground fires. He concluded that, while individual plants established before the disturbance may survive, recruitment into disturbed sites is not likely. Fail and Sommers (1993) conducted a study on the Marshall Forest that suggests the associated species *Quercus prinus* (Chestnut oak) and *Oxydendrum arboreum* (Sourwood) may be producing allelopathic agents (toxic compounds) that may be inhibiting the growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially rhizomatous colonial plants, and is not found in thick herbaceous cover (Bridges 1984). While optimal light conditions are not yet known, plants grow in areas that receive a relatively greater amount of light at ground level, generally due to canopy disturbance (Sutter, *in litt.*, 1993). Nix (1993) states that ''canopy coverage is probably the most important environmental factor that influences growth and survival.'' However, disturbances to the canopy accompanied by disturbances to the soil can lead to increases in other herbaceous species that could be detrimental to *Scutellaria montana*.

When we listed *Scutellaria montana* in 1986, 10 populations were known—7 in Georgia (4 in Floyd County, 2 in Walker County, and 1 in Gordon County) and 3 in Tennessee (2 in Hamilton County and 1 in Marion County). Currently, 48 populations (some made up of more than one subpopulation) are known. We have defined a population as an ''occurrence'' that is generally at least 0.5 mile from other occurrences, but site-specific determinations take into account physical barriers (ridges, highways, etc.), contiguous habitat (2 or more occurrences deemed part of a single population could be 1 mile apart on the same ridge or slope), and richness or diversity of the occurrence. Based on criteria in the Large-flowered Skullcap Recovery Plan, a population is considered self-sustaining, or viable, if it has a minimum of 100 individuals.

Georgia is now known to have 29 populations. In Floyd County, there are now 9 known populations (15 occurrences), 5 of which are self-sustaining, ranging in size from a few plants to about 1,300 plants. All of one self-sustaining population and 90 percent of another self-sustaining population are protected (owned by The Nature Conservancy [TNC]), including the largest of the nine populations in the county. The remaining populations are all on private land.

Catoosa County, Georgia, is currently known to have 6 populations (10 occurrences). Three of the populations are self-sustaining, ranging in size from about 140 to more than 300 plants. The largest population receives some protection as it is within Catoosa County Park. The other populations are all on private land or land of unknown ownership. There is also evidence of a site with *Scutellaria montana* on Chickamauga Park (owned by the National Park Service [NPS]) in Catoosa County, but the site has not been surveyed and its status is considered ambiguous according to the Georgia Natural Heritage Program.

Five new populations (8 occurrences) have been discovered in Gordon County, Georgia, though none appear to be self-sustaining (all have less than 100 plants). One population known from Gordon County, Georgia, was extirpated when the area was clearcut early in 1986, prior to the listing of the species.

Walker County, Georgia, has three nonself-sustaining populations (5, 16, and 60 plants, respectively). The population of 16 plants is found on NPS land, and the other 2 are privately owned. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included among populations counted towards attainment of criteria for downlisting).

Murray County has two nonself-sustaining populations, all on private land, and there are currently two nonviable populations (three occurrences) known from Chattooga County, Georgia. One population has only three plants (on U.S. Forest Service [USFS] land), and the other two occurrences that make up the other population are described as having only four plants and ''dozens'' of plants. A single, nonviable population (10 plants) occurs on NPS land in Dade County, Georgia, near the Lookout Mountain population in Tennessee, and a single nonviable population (~60 plants) of unknown ownership has been found in Whitfield County.

Tennessee is now known to have 19 populations. Hamilton County has 14 known populations, 7 of which are considered self-sustaining. These populations range in size from a few plants to more than 2,600 plants. Several Hamilton County populations are made up of multiple subpopulations, some of which are large enough to constitute self-sustaining populations by themselves, but they do not meet the necessary criteria set forth in the recovery plan to be considered separate populations.

Marion County, Tennessee, now has 2 populations ranging in size from about 50 plants to more than 40,000 plants at

the Tennessee River Gorge. The Tennessee River Gorge population is made up of 8 subpopulations, 2 of which contain more than 20,000 plants. All of the smaller Marion County site (55 plants) is protected, and 6 of the 8 subpopulations in the Tennessee River Gorge are protected (less than 1 percent of the plants are not protected).

Three populations (2, 50, and ''several hundred'' plants, respectively) are known from Sequatchie County, Tennessee, with only the latter being self-sustaining. The landowner of the largest population is willing to protect the plant through a donated conservation easement, but the agreement has yet to be formalized.

Previous Federal Actions

Federal Government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on plants considered endangered, threatened, or extinct. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Scutellaria montana* was included in the Smithsonian report and the July 1, 1975, Notice of Review.

We published a revised Notice of Review for Native Plants on December 15, 1980 (45 FR 82480); *Scutellaria montana* was included as a category 1 species. Category 1 species were those for which we had information on file to support proposing them as endangered or threatened. On November 28, 1983, we published a supplement to the Notice of Review for native plants in the **Federal Register** (48 FR 53640). *Scutellaria montana* was changed to a category 2 species in this supplement. Category 2 species were those for which we had information suggesting that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats were not currently known or on file to support the preparation of proposed listing rules. Subsequent to this notice, we received a draft status report on *Scutellaria montana* (Collins, unpublished). This report and other available information indicated that the addition of *Scutellaria montana* to the *Federal List of Endangered and Threatened Wildlife and Plants* was appropriate.

All plants included in the comprehensive plant notices were treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This situation was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, we found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. On September 27, 1985, *Scutellaria montana* was again included as a category 1 species in the revised Notice of Review (50 FR 39526), and on November 13, 1985, we published in the **Federal Register** (50 FR 46797) a proposal to list *Scutellaria montana* as an endangered species. That proposal constituted the next 1-year finding as required by the 1982 amendments to the Act. A final rule placing *Scutellaria montana* on the *Federal List of Endangered and Threatened Wildlife and Plants* as an endangered species was published in the **Federal Register** on June 20, 1986 (51 FR 22521).

Since listing, Federal actions have included a variety of recovery actions funded or carried out by the Tennessee Valley Authority (TVA), NPS, USFS, and the Service, including searches for additional populations, habitat studies, translocations, and land management.

We have conducted numerous consultations under section 7 of the Act involving *Scutellaria montana.* More than 50 consultations have taken place in Tennessee, principally concerning road and bridge construction or maintenance. Most potential conflicts have been resolved early in the informal portion of the consultation process, resulting in our concurrence with ''not likely to adversely affect'' determinations. One formal consultation was conducted that resulted in a ''no jeopardy'' biological opinion. Three informal section 7 consultations regarding this species have taken place in Georgia.

A recovery plan was completed for *Scutellaria montana* in 1996 (Service 1996). The recovery plan provides the following criteria for downlisting: ''If numbers of discrete populations increase to 25 (because of the discovery or establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range), the species will be considered for downlisting to threatened status.'' The recovery plan also provides a description of protected and managed self-sustaining populations as follows: ''A population will be considered adequately protected when it is legally protected and all needed active management is provided. A population will be considered 'self-sustaining' if monitoring data support the conclusion that it is reproducing successfully and is stable or increasing in size. The minimum number of individuals necessary for a self-sustaining population should be considered at least 100 until otherwise determined by demographic studies.''

The criteria for downlisting have been met through both the number of known populations (48) and the number of self-sustaining (viable), protected populations (11) distributed throughout the species' range. Though no formal written agreements have been developed with the principal landowners where protected, self-sustaining populations occur (TNC, the States of Georgia and Tennessee, TVA, and the NPS), managers of this land are committed to the conservation of these populations and are actively involved as part of the recovery effort.

On February 8, 1998, we mailed letters to 94 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering a proposal to reclassify *Scutellaria montana* as a threatened species. We received three written responses (TVA, Tennessee Department of Environment and Conservation, and the Wildlife Resources Division of the Georgia Department of Natural Resources), all in support of downlisting.

Summary of Comments and Recommendations

On July 12, 2000, we published the proposed rule to reclassify *Scutellaria montana* from endangered to threatened status in the **Federal Register** (65 FR 42973), under the authority of the Act. Additionally, we announced this proposal in letters (110) dated July 17, 2000, and in legal notices published in the *Rome News Tribune,* Rome, Georgia, on July 23, 2000; the *Walker County Messenger,* LaFayette, Georgia, and the *Catoosa County News,* Ringgold, Georgia, on July 26, 2000; the *Jasper*

Journal, Jasper, Tennessee, on July 27, 2000; and the *Chattanooga Times,* Chattanooga, Tennessee, on July 28, 2000. Those documents notified affected congressional offices, the governors of Tennessee and Georgia, Federal and State agencies, local governments, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination. We also announced the proposed downlisting through a press release on July 18, 2000, that was also made available on the Service's Southeast Regional home page on the Internet (*southeast.fws.gov*).

Changes in the Final Rule as a Result of the Public Comments

We received four responses during the public comment period (one from a Federal agency, two from State agencies, and one from a conservation organization), all in support of the proposed reclassification. These comments did not result in any significant changes to the final rule. Population data received from the Georgia Department of Natural Resources' Natural Heritage Program are incorporated in this final rule. Key issues raised in the comments are presented below.

Issue 1: One commenter raised concerns that "* * * the qualifications for protected populations be published [as part of consensus opinions] during the downlisting procedure or in a revised Recovery Plan * * * to ensure such populations are viable, have feasible stewardship provisions to ensure the survival of the population, and represent the total range of the species * * *"

Our Response: We agree that further definition of what constitutes a protected population will be valuable for this species and this issue will be considered through the recovery plan revision process.

Issue 2: In the proposed rule we stated that "* * * *Scutellaria montana* was not a significant component of the commercial trade in native plants. Significant commercial trade in *Scutellaria montana* is not currently known to occur or expected in the future, and no significant import or export is expected." One comment letter pointed out that at least one named cultivar of this species is ready to be placed in commercial trade. They also stated that *Scutellaria montana* is unlikely to be collected in the wild and that both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed in all in-State commerce.

Our Response: We have changed this final rule to reflect this information.

Issue 3: Under 50 CFR, subpart G, § 17.71(a) "Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of § 17.61, provided that a statement that the seeds are of 'cultivated origin' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations." One comment letter stated that "cuttings" as well as seeds should be included in this exemption, as this is a common way plants enter the horticultural trade.

Our Response: Cuttings are a common way plants enter the horticultural trade, and plants grown from legally obtained cuttings might logically be allowed under this same exemption. Unfortunately, this oversight can only be corrected by amending the Act or its implementing regulations. If necessary and consistent with species conservation, it is possible to exempt cuttings of threatened species in a manner similar to seeds of cultivated specimens by preparing a special rule under section 4(d) of the Act.

Issue 4: One comment letter stated that "* * * because many of the populations occur on public land in late successional forests, which are still subject to industrial extraction and other development that could impact the species * * * and many of the private-land populations may be subject to projects with Federal implications * * * critical habitat is surely prudent and determinable at this time."

Our Response: In the more than 14 years since this species was listed, no Federal project or federally permitted project has had a significant impact on this species. The NPS, through its own regulations and in accordance with the Act, is unlikely to have a project ever result in significant impacts to *Scutellaria montana.* Similarly, the TVA has been a leader in the recovery of this plant, having implemented various protective measures, management techniques, and surveys for additional populations. The TVA is currently discussing with the Service, in both Tennessee and Georgia, and other stakeholders the possibility of entering into a cooperative agreement to promote the further recovery of this species. Further, more than half of the known plants and most of the largest population are on land owned by the Tennessee River Gorge Trust, a conservation organization that has also been instrumental in protecting this species. Although timber-harvesting activities continue to threaten the species, since listing, no population of large-flowered skullcap has been lost to timber-harvesting. Because (1) critical habitat designation would not result in substantial benefits to the species, (2) there is currently a large backlog of listed species without critical habitat designation—many of which would benefit more from critical habitat designation than this species, and (3) the status of this species is currently improving, we believe our limited funding available for critical habitat designation should be spent on critical habitat designations for species for which such designation would provide more benefit. Furthermore, we expect that all of the appropriation to be made available for critical habitat designation in the near future will be used to comply with existing court orders and settlement agreements. Therefore, we are not proposing to designate critical habitat for *Scutellaria montana* at this time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the *Federal List of Endangered and Threatened Wildlife and Plants.* These factors and their application to *Scutellaria montana* (large-flowered skullcap) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

In 1986, when *Scutellaria montana* was listed as endangered, 7 populations were known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only 2 sites, neither of which was completely protected. At the time of listing, the most significant threats were logging, wildfires, livestock grazing, and residential development. In 1986, 80 percent of the site with the largest known population had been subdivided and was being offered for sale. A large portion of the second largest population at that time was on land owned by TNC and was therefore afforded protection. The third largest population occurred on privately owned land and had no protection from potential land-use changes. All remaining 1986 populations were extremely small, consisting of 4 to 60 plants.

Though this species is under less threat than when listed, largely due to

the discovery of additional populations, and 22 (46 percent) of the 48 known populations are currently being afforded protection through ownership by conservation organizations, county parks, historic sites, or Federal land (11 of these protected populations are considered self-sustaining), threats to the species' habitat and future security still exist. Further, nearly 80 percent of the known plants continue to occur at only two sites in the Tennessee River Gorge population.

Habitat destruction caused by logging, residential development, clearing of wooded areas for pasture, grazing, and wildfire all continue to pose some degree of threat to the species. Prior to listing, one population of *Scutellaria montana* was lost due to clearcutting activities (prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property). Damage caused by off-road vehicles and hikers (trampling) has been noted at several sites, and the maintenance (widening) or rerouting of hiking trails is also a potential threat. Rapid urbanization in and around the Chattanooga area also poses a threat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

When *Scutellaria montana* was listed as an endangered species (1986), it was not a significant component of the commercial trade in native plants. During the comment period for this rule, the Georgia Department of Natural Resources informed us that ''there is at least one named cultivar of this species ready to be placed in commercial trade.'' However, both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed for all in-State commerce. Except for seeds of cultivated origin, inter-State commerce, import, and export are prohibited for threatened species. We know of no reason to believe that trade in accordance with the provisions for protection of threatened species or any other type of current or future utilization pose an appreciable risk to wild populations of *Scutellaria montana.*

C. Disease or Predation

While herbivory by animals, especially deer, has been observed at several sites, herbivory does not appear to be a factor affecting the continued existence of the species at this time. Some individual plants have been affected by disease, but this factor appears to affect only a few individuals and is not a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Though there is less protection afforded to threatened plants than to endangered plants under section 9 of the Act, most of the legal protections conferred under the ESA will remain in place following final reclassification of *Scutellaria montana.* Both Georgia (Ga. Code Ann. §§ 27–3–130 *et seq.*) and Tennessee (Tenn. Code Ann. §§ 70–8–301 *et seq.*) have rare plant protection laws that also protect this species. Georgia has separate laws covering endangered plant and animal species. (Ga. Code Ann. §§ 27–3–130 *et seq.*; §§ 12–6–171 *et seq.*) Listing under both acts is limited to scientific and commercial criteria. Habitat acquisition is authorized but not required. The acts do not require recovery plans or agency consultation. Violations constitute a misdemeanor. In addition, the Georgia Environmental Policy Act requires the assessment of major proposed agency impacts on biological resources. (Ga. Code Ann. § 12–16–1 *et seq.*)

In Tennessee, the Rare Plant Protection and Conservation Act authorizes investigation, listing, and education efforts. (Tenn. Code Ann. §§ 70 8–301 *et seq.*) Listing is based on scientific and commercial data only. The act cannot be used to interfere with, delay, or impede any public works project. Penalties include fines up to $1,000 and/or imprisonment of up to six months. Tennessee does not have an ''environmental protection act.'' However, by statute, any person or agency planning an energy project must submit an analysis of the environmental impacts of the project. (Tenn. Code Ann. § 13–18–103) In addition, any person conducting oil and gas activities must prevent or mitigate adverse environmental impacts. (Tenn. Code Ann. § 60–1–202) Tennessee has private land conservation programs. For example, conservation easements are authorized by statute. (Tenn. Code Ann. §§ 66–9–301 *et seq.*) Owners of land subject to a conservation easement are not liable for injury to a third person using the land. (Tenn. Code Ann. § 11–10103) A Forest Stewardship Program assists private landowners with conservation issues. In addition, the Tennessee Biodiversity Program encourages private landowners to protect critical areas. While considerable progress has been made towards recovery of *Scutellaria montana* under these regimes, some threats, such as habitat modification, remain sufficiently serious that the species still requires protection under the Act until the number of total and protected populations can be further increased. Such additional increases in the total number of populations, particularly those under protection, may sufficiently reduce the risk of extinction, even under these current State laws, that concerns under Factor D are no longer an obstacle to delisting *Scutellaria montana.*

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Scutellaria montana appears to be quite sensitive to the amount of light available. To the extent that human activities facilitate the growth of non-native, invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), competition with these species for light currently remains a problem for some populations of *Scutellaria montana.* These nonnative species are likely to continue to be a problem where disturbance allows these species to become established in close proximity to *Scutellaria montana.*

Several investigators have noted a low reproductive capacity for *Scutellaria montana.* The percentage of flowers that form fruit has been recorded at 30 and 44 percent in the Marshall Forest (Kemp and Knauss 1990), and in another study, 91.5 percent of the plants did not form fruits (Kemp 1987). This reproductive rate is extremely low compared with other *Scutellaria* species that have 75 to 93 percent of the flowers producing mature nutlets (Collins 1976).

Scutellaria montana also produces fewer seeds per fruit compared with other members of the genus. Kemp and Knauss (1990) found that the fruit averaged 2.2 to 2.3 seeds rather than the 4 seeds that are possible. Similarly, Cruzan (*in* Shea and Hogan 1998) found pollen present on 60 percent of the styles, but only 15 percent of these flowers set fruit, with an average of two seeds per fruit. As mentioned previously, the long floral tube and a sucrose-hexose ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993). However, after several hundred hours of observations over 4 years, Cruzan and Hopkins (in prep.) found these pollinators appeared to be rare or lacking and believed that the low seed production is largely because of the lack of pollen deposition on stigmas (Cruzan and Hopkins, in prep.), indicating a possible loss of, or decline in, an associated pollinator(s). The loss/decline of an associated pollinator, particularly one able to travel relatively

long distances, could also explain the apparent inbreeding noted at smaller and more isolated populations of this self-compatible species (Cruzan and Vege, in prep.).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria montana* in determining this final rule. Based on this evaluation, the preferred action is to reclassify *Scutellaria montana* from an endangered species to a threatened species. The recovery plan for *Scutellaria montana* states that the species is qualified for downlisting to threatened: ''* * * If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range) * * *'' The criteria for downlisting have been met through both the number of known populations (48) and the number of viable (self-sustaining), protected populations (11) distributed between both States in the species' range.

Available Conservation Measures

All of 23 populations of *Scutellaria montana* and a portion of 9 others are privately owned (all of 1 population and a portion of 2 others are owned by conservation groups, accounting for nearly 43 current page percent of all plants), 1 is County-owned, a portion of 1 is City-owned, and 1 entire population and a portion of 5 others are State-owned. State-owned land harbors more than 40 percent of the known plants, second only to the number owned by conservation organizations. In addition, 10 entire populations and portions of 3 others are on Federal land (TVA, NPS, and Department of Defense [U.S. Army]).

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. However, unlike endangered plants, not all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.67, apply. However, section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Those prohibitions that do apply to threatened plants, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions (50 CFR 17.71) provided their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought or issued because the species is not a common cultivar or common in the wild.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Athens Field Office, U.S. Fish and Wildlife Service, 247 South Milledge Avenue, Athens, Georgia 30605 (Phone 706/613–9493), or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (Phone 931/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–4176; Fax 404/679–7081).

This rule changes the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Reclassification maintains most of the protections for this species under the Act. Anyone importing or exporting, transporting in interstate or foreign commerce in the course of a commercial activity, selling or offering for sale in interstate or foreign commerce, or removing and reducing the species to possession from areas under Federal jurisdiction will be subject to a penalty under section 11 of the Act. Although less than those for endangered species, substantial penalties apply to illegal take of threatened species. Federal agencies will continue to be responsible for ensuring that their activities are not likely to jeopardize the continued existence of *Scutellaria montana,* as prescribed by section 7 of the Act.

This final rule is not an irreversible action on the part of the Service. Reclassifying *Scutellaria montana* back to endangered status is possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Paperwork Reduction Act

This final rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by revising the entries for *Scutellaria montana* under ''FLOWERING PLANTS'' in the ''Status'' column to read ''T'' instead of ''E'' and in the ''When Listed'' column to read ''234, 720''.

Dated: November 15, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–665 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010710169–1169–01; I.D. 060401B]

RIN 0648–AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Extension of expiration date and technical amendments.

SUMMARY: NMFS amends the emergency rule extension regulations governing the Atlantic highly migratory species (HMS) fisheries that closed the Northeast Distant Statistical Reporting (NED) area, required modifications in deploying pelagic longline fishing gear, and requiring sea turtle handling and release guidelines for bottom and pelagic longline fisheries to be posted in the wheelhouse. This revision is needed to make the regulations consistent with the June 14, 2001, Biological Opinion (BiOp) on the Atlantic HMS Fishery Management Plan and its associated fisheries. The intent of this revision is to adjust the effective dates listed in the July 13, 2001, emergency rule and in the September 24, 2001, emergency rule revision.

DATES: The expiration date of the rule published September 24, 2001 at 66 FR 48812 is extended from January 9, 2002 to July 8, 2002. The amendments in this rule are effective January 10, 2002, to July 8, 2002. Comments must be received by February 28, 2002.

ADDRESSES: Written comments may be sent to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West

Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the documents mentioned in this emergency rule revision may also be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301–713–2347 or via fax at 301–713–1917.

SUPPLEMENTARY INFORMATION: On June 14, NMFS issued a BiOp that found that the Atlantic pelagic longline fishery is jeopardizing the continued existence of loggerhead and leatherback sea turtles. The BiOp estimated that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. To achieve the necessary reduction, the BiOp required the implementation of a reasonable and prudent alternative that was composed of several elements including an area closure and gear modifications.

On July 13, 2001, NMFS issued an emergency rule (66 FR 36711) to implement the BiOp. Specifically, the regulation closed the NED area, required specific gear deployment modifications, and required that the safe handling and release guidelines for sea turtles caught in pelagic longline gear be posted aboard all vessels permitted for HMS fisheries. The emergency rule is effective until January 9, 2002.

On September 24, 2001 (66 FR 48812), the July 13, 2001, emergency rule was revised to adjust the requirement to post the sea turtle handling and release guidelines in the wheelhouse of all HMS permitted vessels. The safe handling guidelines are specific to longline interactions and would not be applicable to vessels using other gear such as seines or gillnets. Accordingly, NMFS revised the regulation to apply only to HMS permitted vessels having pelagic and bottom longline on board.

On December 13, 2001 (66 FR 64378), NMFS published a regulation that extended the July 13, 2001, emergency rule for 180 days. This measure insures that the regulations do not lapse as NMFS prepares a proposed rule and environmental impact statement to implement the required measures of the BiOp. The emergency rule extension maintains the sea turtle protection measures through July 8, 2002.

In extending the July 13, 2001, emergency rule, NMFS inadvertently omitted the September 24, 2001, revisions and the necessary references to the new effective dates. This emergency rule revision adjusts the effective dates established in the July 13, 2001, emergency rule and the September 24, 2001, emergency rule adjustment to make the effective dates consistent with the intent of the December 13, 2001, emergency rule extension.

Classification

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(3), finds that providing prior notice and opportunity for public comment on this revision would be contrary to the public interest. This revision is necessary to maintain the intended effective dates of the December 13, 2001, emergency rule extension. An opportunity was provided for public comment on the extension of the emergency rule and on the BiOp that was the basis of the emergency rule. The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of these regulatory amendments. As the previously implemented regulations will expire on January 9, 2002, delaying the effectiveness of these amendments would create a lapse in the protection measures for the threatened and endangered sea turtles.

Because prior notice and opportunity for public comment are not required for this emergency rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This action is not significant under the meaning of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: January 7, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

§ 635.21 [Amended]

2. In § 635.21, paragraph (a)(4), added at 66 FR 48812, September 24, 2001, and extended by this rule is amended by removing ''effective September 15, 2001, through January 9, 2002'' and adding ''effective January 10, 2002, to July 8, 2002'' in its place.

3. In § 635.21, paragraph (c)(5)(iii), added at 66 FR 36711, July 13, 2001, and extended at 66 FR 64378, December 13, 2001, is amended by removing ''effective August 1, 2001, through January 9, 2002'' and adding ''effective January 10, 2002, to July 8, 2002'' in its place.

4. In § 635.21, paragraph (c)(6)(v), added at 66 FR 36711, July 13, 2001, and extended at 66 FR 64378, December 13, 2001, is amended by removing ''effective July 15, 2001, through January 9, 2002'' and adding ''effective January 10, 2002, to July 8, 2002'' in its place.

* * * * *

[FR Doc. 02–775 Filed 1–19–02; 11:30 am]

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Rules and Regulations

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–44–AD; Amendment 39–12592; AD 2002–01–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions, if necessary. The actions specified by this AD are intended to prevent excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 19, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published in the **Federal Register** on May 31, 2001 (66 FR 29514). That action proposed to require initial and repetitive inspections of the elevator tab assembly to find any damage or discrepancy; and corrective actions, if necessary.

Comments

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

One commenter has no objection to the proposed rule.

Clarify Repetitive Inspection Intervals

Two commenters ask for clarification of the repetitive inspection interval for Work Packages II and III, as specified in paragraph (a) of the proposed rule. One commenter states that it is unclear which interval the operator should use for the repetitive inspections: the interval in paragraph (a) or (b) of the proposed rule. The commenter adds that if the operator adheres to Work Package III using the more restrictive repetitive inspection intervals specified in paragraph (a), the requirement in paragraph (b) of the proposed rule is being met by the more frequent inspections; therefore, there is no need to track paragraph (b). The second commenter states that it interprets Note 2 of the proposed rule as referring to the requirements of the initial inspection only, and not to the repetitive inspection intervals specified in paragraphs (a) and (b) of the proposed rule. The commenter adds that its interpretation is that the repetitive inspections are still required at the intervals specified in paragraphs (a) and (b) of the proposed rule, but an inspection done per Work Package III can be used to take credit for the inspection specified in Work Package II.

The FAA concurs that clarification of the correct repetitive inspection interval for substitution of Work Package III for Work Package II, as specified in paragraph (a) of the final rule, is necessary. If the repetitive inspections in paragraph (a) are being done per Work Package III, it is not necessary to track paragraph (b), as noted by the first commenter. Note 2 of this final rule has been changed for clarification.

Clarify Reporting Requirement

One commenter asks that the FAA add a note to the proposed rule stating that the FAA is not requiring the reporting requirement that is specified in Boeing Service Bulletin 737–55A1070, Revision 1. The commenter adds that a section should be added to the proposed rule stating that operators should submit their findings to Boeing after each inspection.

The FAA agrees that some clarification is necessary. Although the referenced service bulletin specifies that a report of inspection results should be submitted to the airplane manufacturer (Boeing) after each inspection, and provides the information to be included in that report, we are not mandating the reporting requirement in this final rule. We have added this clarification to paragraphs (a) and (b) of the final rule.

Referenced Service Information

One commenter notes several issues with the service bulletin:

- Page 25 of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001, specifies concurrent accomplishment of certain service bulletins. The commenter would like clarification as to whether the referenced service bulletins are required to be accomplished concurrently with accomplishment of Boeing Service Bulletin 737–55A1070.
- Page 76 of the service bulletin has a typographical error in Item (g). That item specifies VMM 55–30–16, which should be CMM 55–30–16.
- Figures 3 and 4 of the service bulletin will be difficult to break into the three work packages, as these figures have combined all three packages into each figure, and have separated the Model 737–200 and –400 series airplanes. The commenter would like the figures broken out to have one figure

for each work package and airplane model.

The commenter has notified the airplane manufacturer of the above issues.

The FAA will inform the airplane manufacturer of the changes requested by the commenter, and we can clarify some of the issues noted by the commenter:

- The service bulletins referenced on page 25 of Boeing Service Bulletin 737–55A1070 are not required to be accomplished concurrently with the bulletin referenced in this final rule. The manufacturer merely recommends concurrent accomplishment because the actions are similar to those in this final rule.
- We agree that Item (g) on page 76 of the bulletin references an incorrect acronym (VMM); the bulletin should refer to the Component Maintenance Manual, so the correct acronym is CMM.
- Only the airplane manufacturer can make revisions or corrections to the figures illustrated in the service bulletin.

No changes to the final rule are necessary in this regard.

Change Paragraph (a)

One commenter asks that the initial detailed visual/free play inspections specified in paragraph (a) of the proposed rule limit the inspections for Work Package I to the ones for elevator tab free play, elevator tab hinge free play, and tab axial free play only. The commenter notes that the detailed visual inspections are not necessary. The commenter also asks that a check be included to ensure that self-locking castellated nuts with cotter pins are installed at each hinge location. The commenter states that the elevator tab and attachment hardware are inspected during the elevator tab hinge free play inspection, so another inspection is redundant. The commenter adds that the detailed visual inspection procedure for the elevator tab attachment hardware cannot be completed because, although the bolt can be wiggled or moved to check for unusual looseness, the spacers and bushings cannot be checked without removing the tab from the elevator. Additionally, the commenter notes that the attachment hardware of the elevator tab control push rod was already addressed in AD 2000–19–05, amendment 39–11906 (65 FR 65258, November 1, 2000), which requires replacement of all existing bolts and attachment nuts at the forward and aft end attachment of each elevator tab push rod with new bolts and self-locking castellated nuts.

The FAA does not agree with the commenter. Although a partial visual inspection may be done during the free play inspection, no minimum level of inspection is defined by the service bulletin. Figures 3 and 4 of Work Package I of the service bulletin describe procedures for doing the free play inspections, but do not describe procedures for a visual inspection. Contrary to the commenter's statement that a visual inspection cannot be completed unless the tab is removed, the spacers and bushings can indeed be visually inspected for unusual looseness without removing the tab, either by inspecting manually or using a probe. We also disagree that the free play inspections are a substitute for the detailed visual inspections. Additionally, AD 2000–19–05 requires a one-time visual inspection of the attachment nuts at the forward- and aft-end attachment of each elevator push rod only, and, therefore, is not a substitute for the repetitive inspections of the tab, hinges, and control mechanism required by this AD. No change to the final rule is necessary in this regard.

Add Paragraph or Note

One commenter asks that a paragraph or note be added to the proposed rule stating that installation of a new or overhauled elevator and tab assembly during a maintenance visit meets the intent of Work Packages II and III, and, therefore, paragraph (a) of the proposed rule does not need to be done during that maintenance visit.

The FAA does not agree. A complete definition of configuration and installation procedures that meet all the requirements of this AD for a new or overhauled elevator and tab assembly, is currently not available. However, once those procedures are defined, the FAA may approve requests for alternative methods of compliance under the provisions of paragraph (d) of the final rule, if data are submitted to substantiate that adequate installation procedures have been developed and an acceptable level of safety can be maintained.

Conclusion

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 previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,790 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,080 airplanes of U.S. registry will be affected by this AD, as follows:

Work package	Work hours @ $60/WH	Cost per airplane	Fleet cost
I	18	$1,080	$1,166,400
II	9	540	583,200
III	14	840	907,200

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

Regulatory Impact

The regulations 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.

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, 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:

2002–01–01 Boeing: Amendment 39–12592. Docket 2000–NM–44–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, line numbers 1 through 3132 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 (d) 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 excessive in-flight vibrations of the elevator tab, which could lead to loss of the elevator tab and consequent loss of controllability of the airplane, accomplish the following:

Initial/Repetitive Inspections

(a) Do the applicable initial detailed visual/free play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package I of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001; at the times specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the free-play inspections after that at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever comes first, per either Work Package II or Work Package III of the service bulletin. Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Note 2: There is a one-way interchangeability between the free-play inspections specified in Work Packages II and III. The repetitive free-play inspections specified in Work Package II can be replaced by the repetitive free-play inspections specified in Work Package III at the repetitive inspection intervals specified in paragraph (a) of this AD. But the repetitive free-play inspections specified in Work Package III cannot be replaced by the repetitive free-play inspections specified in Work Package II.

(1) For airplanes having less than 4,500 total flight cycles: Before the accumulation of 4,500 total flight cycles or within 120 days after the effective date of this AD, whichever comes later.

(2) For airplanes having 4,500 or more total flight cycles: Do the inspections at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Within 120 days after the effective date of this AD.

(ii) If the initial inspections were done before the effective date of this AD per Boeing All Operator Telex M–7200–00–00034, dated February 15, 2000: Within 1,500 flight cycles or 2,000 flight hours after the effective date of this AD, whichever comes later.

Note 3: Initial inspections done before the effective date of this AD per Boeing Alert Service Bulletin 737–55A1070, dated January 13, 2000, are considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation or assembly to find damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 4,500 flight cycles or 6,000 flight hours, whichever comes first, after doing the initial inspections required by paragraph (a) of this AD: Do the free-play inspections of the elevator tab assembly on the left and right sides of the airplane to find any damage or discrepancy per Work Package III of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001. Repeat the inspections after that at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever comes first. Where the service bulletin specifies reporting the inspection results to the manufacturer, this AD does not require such reporting.

Corrective Actions

(c) If any damage or discrepancy is found after doing any inspection required by paragraph (a) or (b) of this AD, before further flight, do the applicable corrective action per the Accomplishment Instructions of Boeing Service Bulletin 737–55A1070, Revision 1, dated May 10, 2001.

Alternative Methods of Compliance

(d) 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 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 737–55A1070, Revision 1, including appendices A, B, and C, dated May 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 19, 2002.

Issued in Renton, Washington, on December 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–200 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 95P–0315]

Hematology and Pathology Devices; Reclassification of the Automated Differential Cell Counter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the automated differential cell counter (ADCC) from class III (premarket approval) into class II (special controls). FDA is also identifying the guidance document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA'' as the special control that the agency believes will reasonably ensure the safety and effectiveness of the device. This reclassification is being undertaken based on new information submitted in a reclassification petition from the International Society for Laboratory Hematology (ISLH), under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 and the FDA Modernization Act of 1997.

DATES: This rule is effective February 13, 2002.

ADDRESSES: Comments and the guidance may be seen at 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 guidance.

FOR FURTHER INFORMATION CONTACT: Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 9, 2001 (66 FR 23634), FDA published a proposed rule to reclassify the automated differential cell counter from class III (premarket approval) into class II (special controls) based on new information regarding this device and on the recommendation of the Hematology and Pathology Devices Panel. FDA also identified the document ''Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells'' as the special control capable of providing reasonable assurance of safety and effectiveness for this device. The agency has since revised the guidance to provide the option of submitting an abbreviated 510(k), thereby reducing the burden. At the same time, FDA is revising the title of the document to ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA.''

Interested persons were invited to comment on the proposed rule by August 7, 2001. FDA received one comment. That comment commended FDA's proposal to reclassify ADCCs into class II and agreed that the guidance proposed as the special control was adequate to provide reasonable assurance of the safety and effectiveness of the device.

II. FDA's Conclusion

Based on a review of the available information, referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA'' via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMICA Facts, at second voice prompt press 2, and then enter the document number (1184) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains a Web site at http://www.fda.gov/cdrh on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH Web site includes device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other medical device-oriented information. The CDRH Web site also includes the document ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA'' which may be accessed at http://www.fda.gov/cdrh/ode/guidance/1184.html. A search capability for all guidance documents may be found at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of ADCCs from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e).

Moreover, compliance with special controls proposed for this device will not impose significant new costs on affected manufacturers because most of

these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to ADCCs, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.5220 is revised to read as follows:

§ 864.5220 Automated differential cell counter.

(a) *Identification.* An automated differential cell counter is a device used to identify one or more of the formed elements of the blood. The device may also have the capability to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids. These devices may combine an electronic particle counting method, optical method, or a flow cytometric method utilizing monoclonal CD (cluster designation) markers. The device includes accessory CD markers.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA.''

Dated: January 3, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–792 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–001]

Drawbridge Operation Regulations; 63rd Street Bridge, Indian Creek, Mile 4.0, Miami Beach, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the 63rd Street Bridge across Indian Creek, mile 4.0, Miami Beach, Miami-Dade County, Florida. This deviation allows the drawbridge owner or operator to not open the Bridge from January 15, 2002 to January 19, 2002. This temporary deviation is required to allow the bridge owner to safely complete repairs to the Bridge.

DATES: This deviation is effective from 12:01 a.m. on January 15, 2002 until 11:59 p.m. on January 19, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The 63rd Street Bridge across Indian Creek, Miami Beach, Miami-Dade County, Florida is a double leaf bridge with a vertical clearance of 11.0 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 50 feet. On December 21, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR part 117 which requires the draw of the 63rd Street Bridge, mile 4.04 at Miami Beach, to open on signal. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR part 117 to complete repairs to the drawbridge. Under this deviation, the 63rd Street Bridge need not open either span from 12:01 a.m. on January 15, 2002 until 11:59 p.m. on January 19, 2002.

Dated: January 7, 2002.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–859 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD01–01–211

RIN 2115–AA97

Safety and Security Zone; Pilgrim Nuclear Power Plant, Plymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones around the Pilgrim Nuclear Power Plant in Cape Cod Bay, Plymouth, MA from November 15, 2001 until June 15, 2002. The safety and security zones will temporarily close all waters within an approximate 1000-yard distance from the plant, and will also close shore areas adjacent to the plant. The safety and security zones prohibit entry into or movement within a portion of Cape Cod Bay and adjacent shore

areas and are needed to ensure public safety and prevent sabotage or terrorist acts.

DATES: This rule is effective from November 15, 2001 until June 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553, the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated.

The Pilgrim Nuclear Power Plant is bordered on one side by water, exposing it to possible attack initiated from waters surrounding the power plant. Due to the potential catastrophic effect an exposure of radiation from the nuclear processes at the plant would have on the surrounding area, this rulemaking is urgently required to prevent potential future terrorist strikes against the Pilgrim Nuclear Power Plant. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render people and facilities within and adjacent to the Pilgrim Nuclear Power Plant property vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures implemented in this rule are intended to prevent possible terrorist attacks against the Pilgrim Nuclear Power Plant. They are needed to protect the facility, persons at the facility, the public and the surrounding community from potential sabotage or other subversive activity, and terrorist attacks, either from the water or by land through access to public trust lands between the low water and high water tide lines adjacent to the facility. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest. These zones should have minimal impact on the users of Cape Cod Bay as vessels are able to pass safely outside the zones. Public notifications will be made to the maritime community via notice to mariners and marine information broadcasts informing them of boundaries of the zones.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC, on September 11, 2001, safety and security zones are being established to safeguard the Pilgrim Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Pilgrim Nuclear Power Plant presents a possible target of terrorist attack, due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. These safety and security zones prohibit entry into or movement within the specified areas.

This rulemaking establishes security and safety zones having identical boundaries in all waters of Cape Cod Bay and land adjacent to those waters enclosed by a line as follows: beginning at position 41°57′30″ N, 070°34′36″ W; then running southeast to position 41°56′36″ N, 070°33′30″ W; then running southwest to position 41°56′28″ N, 070°34′38″ W; then running northwest to position 41°56′50″ N, 070°34′58″ W; then running northeast back to position 41°57′30″ N, 070°34′36″ W. This rulemaking also removes safety and security zones established on September 24, 2001 under temporary rulemaking 33 CFR 165.T01–171(a)(4) (66 FR 49280, Sept. 27, 2001). That rulemaking established safety and security zones with identical boundaries in the following area: All waters of Plymouth Bay within a five hundred (500) yard radius of the cooling water discharge canal at the Pilgrim Nuclear Power Plant, Plymouth, MA. Those safety and security zones did not extend to the full boundaries of the facility. This rulemaking is necessary to provide complete protection of the waterfront areas of the Pilgrim Nuclear Power Plant. The increase of the boundaries of the zones seaward is necessary to ensure enforcement authorities enforcing the zone ample area to adequately prevent any incursions of the zone allowing access to the plant. The safety and security zones established in this rulemaking extend the safety and security zones established in section 165.T01–171(a)(4) to an area roughly 1000-yards from the shoreline of the facility. That section, 165.T01–171 (a)(4), was also temporarily removed by temporary rulemaking 33 CFR 165.T01–201 effective November 5 to November 15, 2001. The safety and security zones also close shore areas immediately adjacent to the facility to prevent access to the facility from the shore area.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

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 policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zones in Cape Cod Bay, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Cape Cod Bay. For the reasons enumerated in the Regulatory Evaluation section above, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, at (617) 223–3000. Small businesses may send comments on the actions 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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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

The Coast Guard 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 pose 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. A rule with tribal implications has 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, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Remove temporary § 165.T01–171(a)(4).

3. From November 15, 2001 until June 15, 2002, add temporary § 165.T01–211 to read as follows:

§ 165.T01–211 Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, Massachusetts.

(a) *Location.* All waters and land enclosed by a line beginning at position 41°57′30″ N, 070°34′36″ W; then running southeast to position 41°56′36″ N, 070°33′30″ W; then running southwest to position 41°56′28″ N, 070°34′38″ W; then running northwest to position 41°56′50″ N, 070°34′58″ W; then running northeast back to position 41°57′30″ N, 070°34′36″ W.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

(3) No person may enter the waters or land area within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: November 15, 2001.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–860 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (E-mail) *matt.miller@fema.gov.*

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

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

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

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

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

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

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

The changes in BFEs are in accordance with 44 CFR 65.4. *National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana:					
Howard (FEMA Docket No. 7606.	Unincorporated Areas	July 20, 2001, July 27, 2001, *Kokomo Tribune*.	Mr. John Harbaugh, President, Howard County Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	June 27, 2001	180414
Hendricks (FEMA Docket No. 7604).	Town of Plainfield	June 7, 2001, June 14, 2001, *Hendricks County Flyer*.	Mr. Richard A. Carlucci, Town Manager, Town of Plainfield, 206 West Main Street, Plainfield, Indiana 46268–0065.	Sept. 14, 2001	180089

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Marion (FEMA Docket No. 7604).	City of Indianapolis	June 14, 2001, June 21, 2001, *Indianapolis Star*.	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, Indiana 46204.	Sept. 21, 2001	180159
Kansas:					
Johnson (FEMA Docket No. 7604).	City of Lenexa	June 19, 2001, June 26, 2001, *Legal Record*.	The Honorable Joan Bouman, Mayor, City of Lenexa, 12350 W. 87th Street Parkway, Lenexa, Kansas 66215.	May 31, 2001	200168
Johnson (FEMA Docket No. 7604).	City of Shawnee	June 21, 2001, June 28, 2001, *Journal Herald*.	The Honorable Jim Allen, Mayor, City of Shawnee, 11110 Johnson Drive, Shawnee, Kansas 66203.	May 31, 2001	200177
Nebraska: Lancaster (FEMA Docket No. 7606).	City of Lincoln	April 19, 2001, April 26, 2001 *Lincoln Journal Star*.	The Honorable Don Wesely, Mayor, City of Lincoln, 555 South 10th Street, Room 208, Lincoln, Nebraska 68508.	March 13, 2001	315273
Ohio: Summit (FEMA Docket No. 7606).	City of Twinsburg	August 9, 2001, August 16, 2001, *Twinsburg Bulletin*.	The Honorable K. A. Procop, Mayor, City of Twinsburg, 10075 Ravenna Road, Twinsburg, Ohio 44087.	November 15, 2001 ...	390534
Oklahoma: Jefferson (FEMA Docket No. 7606).	City of Waurika	July 5, 2001, July 12, 2001, *Waurika News-Democrat*.	The Honorable Biff Eck, Mayor, City of Waurika, 122 South Main, Waurika, Oklahoma 73573.	October 11, 2001	400076
Texas:					
Hidalgo (FEMA Docket No. 7604).	City of Edinburg	May 24, 2001, May 31, 2001, *Edinburg Daily Review*.	The Honorable Joe Ochoa, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540.	May 14, 2001	480338
Hidalgo (FEMA Docket No. 7604).	Unincorporated Areas	May 24, 2001, May 31, 2001, *Monitor*.	The Honorable Jose E. Pulido, Hidalgo County Judge, P.O. Box 1356, Edinburg, Texas 78540.	May 17, 2001	480334
Denton (FEMA Docket No. 7606).	Town of Little Elm	July 12, 2001, July 19, 2001, *Denton Record-Chronicle*.	The Honorable Jim Pelley, Mayor, Town of Little Elm, P.O. Box 129, Little Elm, Texas 75068.	October 18, 2001	481152

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

Dated: January 8, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–802 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7608]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

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

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

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (E-mail) *matt.miller@fema.gov.*

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

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

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

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

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

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

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

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

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Craighead.	City of Jonesboro	Sept. 4, 2001, Sept. 11, 2001, *Jonesboro Sun*.	The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845.	Aug. 15, 2001	050048
Indiana:					
Howard	Unincorporated Areas	Oct. 23, 2001, Oct. 30, 2001, *Kokomo Tribune*.	Mr. John Harbaugh, President, Howard County Board of Commissioners, 230 North Main, Kokomo, Indiana 46901.	Oct. 12, 2001	180414
Howard	City of Kokomo	Oct. 23, 2001, Oct. 30, 2001, *Kokomo Tribune*.	The Honorable James Trobaugh, Mayor, City of Kokomo, 100 South Union Street, Kokomo, Indiana 46901.	Oct. 12, 2001	180093
Minnesota: Winona.	Unincorporated Areas	Dec. 21, 2001, Dec. 28, 2001 *Winona Daily News*.	Mr. David Stoltman, Chairperson, Winona County, Board of Commissioners, 177 Main Street, Winona, Minnesota 55987.	Mar. 29, 2002	270525
Missouri:.					
St. Charles ..	City of Cottleville	Oct. 5, 2001, Oct. 12, 2001, *St. Charles Journal*.	The Honorable Robert Powers, Mayor, City of Cottleville, P.O. Box 387, Cottleville, Missouri 63338.	Jan. 11, 2002	290898
St. Charles ..	Unincorporated Areas	Oct. 5, 2001, Oct. 12, 2001, *St. Charles Journal*.	Mr. Joe Ortwerth, County Executive, St. Charles County, 201 North Second Street, St. Charles, Missouri 63301.	Jan. 11, 2002	290315
Ohio: Lorain	City of Avon Lake	Oct. 24, 2001, Oct. 31, 2001, *Morning Journal*.	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon Belden Road,Avon Lake, Ohio 44012–1699.	Jan. 30, 2002	390602
Oklahoma:					
Tulsa	City of Broken Arrow ...	Oct. 18, 2001, Oct. 25, 2001, *Broken Arrow Ledger*.	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610Broken Arrow, Oklahoma 74013.	Jan. 24, 2002	400236
Tulsa	City of Broken Arrow ...	Nov. 1, 2001, Nov. 8, 2001, *Broken Arrow Ledger*.	The Honorable James Reynolds, Mayor, City of Broken Arrow, 220 South First Street, Broken Arrow, Oklahoma 74012.	Feb. 7, 2002	400236

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma	City of Edmond	Nov. 1, 2001, Nov. 8, 2001, *Edmond Sun*.	The Honorable Saundra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73080.	Oct. 15, 2001	400252
Oklahoma	City of Oklahoma City	Dec. 5, 2001, Dec. 12, 2001, *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	Mar. 13, 2002	405378
Texas:					
Dallas and Ellis.	City of Cedar Hill	Oct. 19, 2001, Oct. 26, 2001, *Southwest Morning News*.	The Honorable Robert L. Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, Texas 75106.	Jan. 24, 2002	480168
Comal	Unincorporated Areas	Nov. 16, 2001, Nov. 23, 2001, New Braunfels Herald-Zeitung.	The Honorable Danny Scheel, Judge, Comal County, 150 North Seguin Street, New Braunfels, Texas 78130.	Feb. 22, 2002	485463
Denton	City of Denton	Nov. 14, 2001, Nov. 21, 2001, *Denton Record Chronicle*.	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	Feb. 20, 2002	480194
Collin	City of Frisco	Dec. 12, 2001, Dec. 19, 2001, *Plano Star Courier*.	The Honorable Kathy Seei, Mayor, City of Frisco, 6891 Main Street, Frisco, Texas 75034.	Mar. 20, 2002	480134
Dallas	City of Garland	Dec. 21, 2001, Dec. 28, 2001, *Garland Morning News*.	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	Nov. 9, 2001	485471
Dallas and Ellis.	City of Grand Prairie	Oct. 19, 2001, Oct. 26, 2001, *Arlington Morning News*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	Jan. 24, 2002	485472
Ellis, Tarrant, and Dallas.	City of Grand Prairie	Nov. 14, 2001, Nov. 21, 2001, *Arlington Morning News*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	Oct. 17, 2001	485472
Harris	Unincorporated Areas	Nov. 8, 2001, Nov. 15, 2001, *Houston Chronicle*.	The Honorable Robert Eckels, Judge, Harris County, 1001 Preston Street, Suite 911, Houston, Texas 77002.	Feb. 14, 2002	480287
Dallas	City of Irving	Dec. 20, 2001, Dec. 27, 2001, *Irving Morning News*.	The Honorable Joe H. Putnam, Mayor, City of Irving, P.O. Box 152288, 825 West Irving Boulevard, Irving, Texas 75015–2288.	Mar. 28, 2002	480180
Galveston	City of League City	Dec. 13, 2001, Dec. 20, 2001, *Galveston County Daily News*.	The Honorable A.T. Frankovich, Mayor, City of League City, City Hall, Suite 216, 200 West Walker, League City, Texas 77573.	Mar. 21, 2002	485488
Ellis	City of Midlothian	Nov. 8, 2001, Nov. 15, 2001, *Midlothian Mirror*.	The Honorable David Setzer, Mayor, City of Midlothian, 104 West Avenue E, Midlothian, Texas 76065–0000.	Feb. 14, 2002	480801
Parker	Unincorporated Areas	Sept. 12, 2001, Sept. 19, 2001, *Weatherford Democrat*.	The Honorable Mark Riley, Judge, Parker County, 1 Court House Square, Weatherford, Texas 76086.	Aug. 9, 2001	480520
Collin and Dallas.	City of Richardson	Nov. 20, 2001, Nov. 27, 2001, *Dallas Morning News*.	The Honorable Gary A. Slagel, Mayor, City of Richardson, P.O. Box 830309, Richardson, Texas 75083–0309.	Feb. 26, 2002	480184
Bexar	City of San Antonio	Dec. 21, 2001, Dec. 28, 2001, *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Mar. 29, 2002	480045

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

Dated: January 8, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–803 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

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

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

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

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

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

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

Regulatory Flexibility Act. The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) (Modified)
AR	Patterson (City), Woodruff County (FEMA Docket No. 7601).	Cache River	U.S. Highway 64 Bridge (COE) (Gage)	*197
Maps are available for inspection at City Hall, 123 South Main, Patterson, Arkansas.				
IA	Council Bluffs (City), Pottawattamie County (FEMA Docket No. 7601).	Indian Creek	At approximately 1600 feet downstream of U.S. Highway 275.	*977
			At approximately 100 feet downstream of Frank Street.	*1023
Maps are available for inspection at the Building Division, City Hall, 209 Pearl Street, Room 207, Council Bluffs, Iowa.				

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

Dated: January 8, 2002.

Robert F. Shea, Jr.,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–801 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[IB Docket No. 00–106, FCC 01–332]

Review of Commission Consideration of Applications Under the Cable Landing License Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts streamlining procedures for processing applications for submarine cable landing licenses. The Commission initiated this proceeding to consider measures to facilitate the expansion of capacity and facilities-based competition in the submarine cable market. The Commission adopted measures designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.

DATES: Effective March 15, 2002 except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2) and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Public comments on the information collection requirements are due on or before February 13, 2002. OMB must submit written comments on the information collection requirements on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to*jboley@fcc.gov*,and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to*edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1499. For additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 01–332, adopted on November 8, 2001, and released on December 14, 2001. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://www.fcc.gov/bureaus/international/Orders/2001/fcc01332/txt.*The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893. Fax: 202–863–2898, e-mail *qualexint@aol.com.*

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in which it proposed streamlining procedures for applications seeking submarine cable landing licenses (65 FR 41613, July 6, 2000). This proceeding was one of a series of such efforts the Commission has undertaken to benefit U.S. consumers by expediting regulatory processing and enhancing the competitiveness of service providers in the global communications marketplace.

2. On November 8, 2001, the Commission adopted a Report and Order (Order) in this proceeding that focused on the objectives set out in the NPRM: (1) To institute an expedited licensing process to speed the deployment of cable capacity to the market; (2) to ensure careful Commission review of certain applications to guard against anti-competitive behavior, and (3) to adopt a pro-competitive model that could be used around the world.

3. The NPRM contained streamlining options that commenters found to be too complex and burdensome. In response to the comments, the Commission adopted a streamlining approach that tracks the streamlining procedures currently used for section 214 authorizations of international telecommunications services.

4. The Commission developed an approach under which most applications should be streamlined. An application will qualify for streamlined processing if the applicants have no affiliation with a carrier that possesses market power in the cable's destination markets. If an applicant has an affiliation with a carrier with market power in any of the cable's World Trade Organization (WTO) Member destination markets, the application will be eligible for streamlined processing if each applicant with such foreign carrier affiliation certifies that it will accept standard competitive safeguards. An application that includes an applicant that is, or is affiliated with, a carrier that has market power in a cable's non-WTO Member destination market will not be eligible for streamlining. To determine affiliation, the Order applies the twenty-five percent (25%) ownership affiliation standard that is currently applied to international section 214 and cable landing license applications.

5. The standard competitive safeguards are designed to detect and deter harm to competition in the United States that may result from a foreign carrier's market power. The safeguards include a requirement to file quarterly provisioning and maintenance reports and quarterly circuit status reports. Licensees concerned about public disclosure of the reports will be able to request a standard protective order for confidential treatment of the information.

6. The Order's competitive safeguards also include a ''no special concessions'' rule that prohibits all licensees from directly or indirectly agreeing to accept a ''special concession'' from a foreign carrier with market power in one or more of the cable's destination markets. The Order defines a special concession as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and

interconnection to the public switched telecommunications network. The rule will apply to all licenses issued after the effective date of the Order. In addition, existing licensees may seek to modify their licenses to substitute this targeted safeguard for the current prohibition against any exclusive arrangements.

7. The Order also adopted a requirement that all cable landing licensees, like international section 214 carriers, must notify the Commission of any foreign carrier affiliations acquired after the issuance of a license where the affiliation is with a carrier in a market at the foreign end of the cable. This rule will be applied to all licensees of all submarine cables, whether authorized by the Commission prior to or after the effective date of the rules adopted herein. The Commission concluded that this rule would provide additional protection against possible anti-competitive conduct.

8. Streamlined processing is optional, and thus applicants may elect to file under the traditional procedures. Moreover, although the Order did not mandate electronic filing of applications, applicants are encouraged to file electronically. Applications that meet the criteria for streamlined processing will be acted upon in a period of forty-five (45) days following the public notice announcing the application as acceptable for filing and eligible for streamlining. Applications acceptable for filing but ineligible for streamlining will be acted upon within ninety (90) days unless the Commission notifies the applicant that the application presents issues that require additional scrutiny, in which case the Commission will extend the review for another ninety (90) days. The Commission delegated to the International Bureau the authority to identify particular applications that, although otherwise eligible for streamlining, may warrant additional public comment and require consideration on a case-by-case basis.

9. The Commission declined to adopt a specific timeframe by which it will issue public notices of applications accepted for filing. Rather, it will continue its practice of issuing public notices of applications accepted for filing in an expeditious manner. The Commission adopted the procedure used for section 214 applications of not routinely removing applications from streamlining based on the filing of comments on competitive or other issues that a party might seek to raise. In addition, the Commission adopted its proposal to grant applications by public notice unless a formal written order is deemed necessary.

10. The Commission adopted a new rule that will require fewer entities to become applicants/licensees. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a landing station in the United States; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In addition, the Commission established a process for an existing licensee that is not a U.S. landing party and owns or controls less than five percent (5%) of the cable system to seek removal from a submarine cable landing license. The Commission also clarified its rule that once an entity is a licensee, it is subject to the Commission's rules for modifications, assignments and transfers of control of interests in cable landing licenses, even where these interests are less than five percent (5%). The Commission will continue to require applicants for a cable landing license to identify all original owners, including those with less than five percent (5%) interest.

11. The Commission reminded applicants seeking common carrier landing licenses that, in addition to the cable landing license application, they must file an application for section 214 authority for the construction of new lines under § 63.18(e)(4) of the Commission's rules.

12. The Commission adopted a new process designed to replace prior review of *pro forma* transactions with a post-transaction notification procedure, thereby allowing entities to proceed with their *pro forma* transactions without delay. In addition, the Commission provided that an existing licensee may file an application to modify its license to take advantage of this post-transaction notification procedure.

13. To provide clear and publicly available conditions for licenses, the Commission codified routine conditions that traditionally have been attached to all cable landing licenses. In addition, the Commission codified the new streamlining procedures, the no special concessions rule for all licensees, the reporting requirements, the *pro forma* procedures, and the applicant-licensee rule.

14. The Order also addressed other issues raised in the NPRM or by commenters. The Commission declined to eliminate the distinction between cables operated on a common carrier and private carrier basis. The Commission suggested that parties seeking modifications to existing fee structures pursue these requests through the annual rulemaking process specifically designated for this purpose. The Commission declined to adopt suggestions to reduce the ownership information required in cable landing license and section 214 applications, deferring this issue to its 2002 biennial review of all of its rules. The Commission clarified its rule regarding the type of information an applicant must provide in its specific description of cable landing stations.

Procedural Matters

15. *Paperwork Reduction Act.* The Order contained modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 13, 2002. OMB notification of action is due March 15, 2002. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0944.

Title: Applications under the Cable Landing License Act.

Form Number: N/A.

Type of Review: Revised collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 25.

Number of Responses: 271.

Estimated Time Per Response: An average of 4 hours per response.

Frequency of Response: On Occasion. Third party disclosure.

Total Annual Burden: 995 hours.

Total Annual Costs: $352,425.

Needs and Uses: The information will be used by the Commission to determine the qualifications of applicants to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or

involved in similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

16. *Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Review of Commission Consideration of Applications under the Cable Landing License Act, Notice of Proposed Rulemaking (NPRM). The Commission sought written public comment on the proposals of the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. (5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

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

17. In recent years, there has been growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic. Because of this increased demand for capacity, the rapid pace of technological development, and the emergence of non-traditional ownership and financing structures in the submarine cable marketplace, the International Bureau reviewed its policies for licensing submarine cables. As a result of the review, the Commission initiated this proceeding.

18. The Order adopts streamlining procedures for processing applications for submarine cable landing licenses. The streamlining procedures are designed to promote the expansion of capacity and facilities-based competition in the submarine cable market, which should increase innovation and lower prices for U.S. consumers of international communications services. The measures also are designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and the government, while preserving the Commission's ability to guard against anti-competitive behavior.

19. The measures adopted in the Order are part of the Commission's continuing streamlining efforts. We recognize the importance of reducing regulatory costs, providing regulatory certainty, and facilitating the planning of financial transactions. The procedures contained in the Order should allow participants in the submarine cable market to make business decisions more readily.

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

20. There were no comments in response to the IRFA. In general, commenters were very supportive of the agency's proposal to streamline the submarine cable landing license process. However, some commenters were concerned that the options proposed in the NPRM could be burdensome and time-consuming for both applicants and Commission staff, and, instead of expediting the licensing process, could slow the licensing process. Thus, commenters proposed alternatives that more closely resembled the streamlining process currently used by the agency for processing international section 214 authorizations. The Order adopts an approach to streamlining that reflects the concerns raised by commenters.

21. Commenters in this proceeding presented a number of approaches and/or criteria for determining whether an application would be eligible for streamlined processing. The Order adopts an eligibility test for cables to World Trade Organization (WTO) Member countries that focuses on whether the applicants are, or are affiliated with, carriers with market power in the cable's destination market. Cables without such affiliations will be eligible for streamlining. Cables with such affiliations will be eligible if the applicants/licensees with such affiliations comply with reporting requirements that are similar to existing dominant carrier reporting requirements applicable to section 214 carriers that have affiliations with market power carriers in foreign markets. (*See* 47 CFR 63.10). In addition, all licensees will be subject to the prohibition against entering into special arrangements with foreign market-power carriers. The Commission believes that the rules and regulations adopted herein both will respond to the commenters' proposals and preserve the Commission's ability to guard against anti-competitive behavior that could result in harm to consumers in the U.S. market.

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

22. The RFA directs agencies to provide a description of, and, where feasible, estimate of, the number of small entities that may be affected by the proposals, if adopted. The Regulatory Flexibility Act 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 Section 3 of 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.

23. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. Some of these telephone communications companies may have ownership interests in submarine cables or use such cables to provide international service. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons. All but 26 of the 2,321 wireline 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 wireline 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, we are 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, we estimate that 2,295 or fewer of these wireline companies are small entities that might be affected by these proposals.

24. The streamlining measures contained in the Order are available to entities applying for a license to land or operate submarine cables under the Cable Landing License Act (or entities applying to assign or transfer control of interests in existing submarine cable landing licenses). The measures, however, may indirectly affect other entities as well, including users of submarine cable service such as Internet

service providers (ISPs) that lease capacity or purchase indefeasible rights of use (IRUs) on cable systems. The policies and rules adopted in the Order will reduce the burden on all applicants regardless of size, by permitting applicants to seek to have their applications granted in a more expeditious manner. We do not have precise numbers for the small entities that will be affected by the policies and rules. Agency data indicates there have been approximately 50 cable landing applications filed with the Commission since 1992, but the total number of licensees at any particular time is difficult to determine, because many licenses are jointly held by several licensees and assignments and transfers of control of interests occur on a regular basis. Based on this information, we would estimate that, over the next five years, the streamlining procedures may benefit as many as 50 applicants meeting the SBA definition of a small entity.

25. In addition to expediting the processing of applications, the Order will require fewer entities to become applicants/licensees. This change will further reduce the number of small entities subject to the rules and regulations. Only the following entities will be required to be applicants for a cable landing license: an entity that (1) owns or controls a U.S. landing station; or (2) owns or controls a five percent (5%) or greater interest in the cable system and will use the U.S. points of the cable system. In order to afford existing cable landing licensees this same opportunity, small entities that meet the criteria may request to be removed from the cable landing license.

26. We note that it is difficult to determine with precision the number of small entities that will be affected by this Order. For example, some small entities with less than five percent (5%) ownership may elect to become licensees. We will be able to compile more specific data only after small entities file applications seeking removal from existing cable landing licenses. However, the following example of cable ownership interests will provide a good illustration of the potential number of small entities that could be exempt from the requirements of the Order. According to agency data at the time of application, the percentage of ownership interests for an existing submarine cable system, the TAT–14 cable, were as follows: four U.S. carriers owned five percent (5%) or greater (these four carriers owned a total of 32.57 percent); fifteen U.S. carriers owned less than five percent (5%) (these fifteen carriers owned a total of 16.93 percent); and thirty-two foreign carriers owned the remaining 50.50 percent.

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

27. Any reporting or recordkeeping requirements imposed on small entities will be insignificant. Generally, applicants seeking a cable landing license will submit the same information that is currently required by the rules. Applicants may continue to file for a license under the existing procedures, and some applicants will not meet the eligibility criteria for streamlined processing. Applicants may file electronic or paper applications.

28. We believe that many small entities below the five percent (5%) ownership criteria may decide not to be cable landing license applicants, and therefore, such entities will not be subject to the reporting, recordkeeping, or compliance requirements applicable to licensees. Small entities that are currently licensees, and meet these criteria, may file an application requesting that they be removed from the license. The application would demonstrate that the entity: (1) Does not own or control a U.S. cable landing station; and (2) holds less than five percent (5%) interest in the cable system. The application would be filed with the Commission and copies would be served on each other licensee of the cable system. This burden should be minimal because the information would be readily available from the information that the entity provided at the time of becoming an initial applicant or from other business records showing an increase or decrease of ownership interest. As an existing licensee of a cable landing license, the entity would have ready access to the names and addresses of other licensees. Thus, the service burden also would be minimal.

29. The Order also adopts standard competitive safeguards that will impose additional reporting burdens on certain entities. We believe, however, that very few small entities will be burdened with this requirement. Reporting requirements will be imposed only on those applicants that have an affiliation with a carrier with market power in any of the cable's destination markets. These applicants will be required to provide provisioning and maintenance reports that include: (a) Identification of each facility or service provisioned and/or maintained; (b) for provisioned facilities and services, the volume or quantity provisioned and the order-to-delivery intervals; and (c) for each facility and service, the number of outages and intervals to restoration. Also, applicants will be required to provide quarterly circuit status reports, on a facility-specific basis, in the format set out by the Commission's annual circuit status manual. If applicants have a concern over the public disclosure of their reports, they may seek confidential treatment of the information and request a standard protective order.

30. The Order also adopts a rule that requires licensees to notify the Commission of new affiliations that they acquire with foreign carriers in a cable's destination market. If the Commission deems it necessary, it will impose on the newly affiliated licensee the reporting requirements discussed above. This rule is similar to the notification rule that applies in the context of international section 214 carriers, *see* 47 CFR 63.11. We believe this reporting requirement will have minimal applicability to small entities because it will apply only to licensees, and it is likely, under our rules, that few small entities (that is, those independently owned and operated companies with no more than 1500 employees) will be required to become licensees.

31. The Order also adopts a new process designed to remove prior Commission review of pro forma assignments or transfers of control of interests in submarine cable landing licenses. Again, this process will have minimal applicability to small entities to the extent they are not cable licensees. Pro forma transactions do not result in a change in the ultimate control of the interest in the cable landing license or in changes to the cable system itself as previously evaluated at the time of the initial license application. Under the Order, a pro forma assignee or a person or company that is the subject of a pro forma transfer of control of an interest in a cable landing license will no longer be required to seek prior approval, but if electing post-transaction notification, must: (1) Notify the Commission no later than thirty (30) days after the pro forma transaction is consummated; (2) certify that the assignment or transfer of control is pro forma, and together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control; and (3) provide an update to any ownership information required by our rules. Under this new rule, the burden of seeking prior approval would be eliminated for most entities, thus allowing them to proceed with their pro forma transaction without delay. Entities would file the same information after the transaction instead of prior to the transaction. The Order provides that

existing licenses could be modified, at a licensee's request, to be subject to this post-transaction process. The licensee would be required to file an application with the Commission seeking a modification of its license to incorporate this limited exception to the prior approval requirement currently set forth in the applicable license condition. This new process will impose a slight burden on applicants that have been granted a cable landing license and wish to take advantage of this new process. Presumably licensees will only subject themselves to this burden if they believe the benefit of expedited post-transaction processing of pro forma assignments or transfers of control will offset any burden. Similarly, the Order states that licensees of previously authorized cables may file applications to modify their licenses to substitute the new, more narrowly tailored ''no special concessions'' rule for the ''no exclusive arrangements'' condition contained in existing licenses.

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

32. 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 (among others): (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 reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities.

33. In the NPRM, we requested comment on whether small entities would be adversely affected by the proposals and whether the proposals would enable small entities to respond to the demands of the market with minimum regulatory oversight, delays, and expenses. Commenters did not specifically address the impact on small entities. Rather, commenters expressed concerns that the NPRM proposals could be burdensome and time-consuming on all entities. Commenters proposed alternative measures more aligned with the existing section 214 streamlining procedures. As a result, the Order adopts measures that are closely modeled on the streamlining process for international section 214 authorizations which has been successful and not burdensome.

34. The procedures adopted in the Order are designed to provide more certainty and flexibility for applicants, encourage investment and infrastructure development by multiple providers, expand available submarine cable capacity, and decrease application processing time. This decision extends the benefits of streamlined processing to as many applicants as possible, including small entities. It reduces the regulatory and procedural burdens while preserving the Commission's ability to guard against anti-competitive behavior. This streamlined processing may benefit small entities especially because the procedures should facilitate entry by such entities into the submarine cable market and expand international services available to such entities. In addition, we have developed a definition of ''licensee'' that should permit a large number of small entities to be exempt from the requirements contained in the Order.

35. Finally, the reporting requirements and other measures adopted in the Order will minimize any economic impact on small entities. The reporting requirements, which apply only to certain licensees, will allow the Commission to monitor and detect anti-competitive behavior without imposing unnecessarily burdensome regulations on a U.S. licensee due to its affiliation with a foreign carrier.

36. To simplify compliance with the rules and requirements, the Order codifies the submarine cable landing license conditions. This step will provide clear and publicly available standard conditions for all entities. Also, applicants will no longer be required to submit a letter affirmatively accepting the terms and conditions of the cable landing license.

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

Ordering Clauses

37. Accordingly, it is ordered that, pursuant to sections 1, 4(i) and (j), 201–255 303(r) of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), and the Cable Landing License Act, 47 U.S.C. 34–39 and Executive Order No. 10530, Sec. 5(a), reprinted as amended in 3 U.S.C. 301, this Report and Order *is hereby adopted* and the Commission's rules, 47 CFR part 1, *are amended* as set forth in the Rule Changes.

38. *It is further ordered* that the policies, rules and requirements established in this decision *shall take effect* March 15, 2002, except for §§ 1.767(a)(7) through (a)(9), (a)(11), (g)(1) through (g)(14), (j), (k), (l)(1) and (l)(2), and (m)(1) through (m)(2); and §§ 1.768(a) through (i) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

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

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications miscellaneous rules relating to common carriers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(7), and (a)(8); redesignating paragraph (a)(9) as (a)(10); adding new paragraphs (a)(9), (a)(11), (g) through (m) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those

coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

* * * * *

(7) A list of the proposed owners of the cable system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable;

(8) For each applicant of the cable system, a certification as to whether the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a foreign cable landing station in any of the cable's destination markets. Include the citizenship of each applicant and information and certifications required in § 63.18(h) through (k), and in § 63.18(o), of this chapter;

(9) A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and

* * * * *

(11) (i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to § 1.768, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. *See § 1.768. See also* paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).

(iii) An assignee or transferee shall notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

* * * * *

(g) *Routine conditions.* Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002:

(1) Grant of the cable landing license is subject to:

(i) All rules and regulations of the Federal Communications Commission;

(ii) Any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and

(iii) Any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;

(2) The location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes;

(3) The licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;

(4) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended;

(5)(i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and from agreeing to accept special concessions in the future.

(ii) For purposes of this section, a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

Note to paragraph (g)(5): Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.*

(6) Except as provided in paragraph (g)(7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Commission gives prior consent in writing;

(7) A pro forma assignee or a person or company that is the subject of a pro forma transfer of control of a cable landing license is not required to seek prior approval for the pro forma transaction. A pro forma assignee or person or company that is the subject of a pro forma transfer of control must notify the Secretary, Federal Communications Commission,

Washington, DC 20554, with a copy to the Chief, International Bureau, Federal Communications Commission, no later than thirty (30) days after the assignment or transfer of control is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment or transfer of control was pro forma, as defined in § 63.24(a) of this chapter, and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control. A single letter may be filed for an assignment or transfer of control of more than one license issued in the name of a licensee if each license is identified by the file number under which it was granted;

(8) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. *See* paragraph (a)(5) of this section;

(9) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of § 1.1307 implementing the National Environmental Policy Act of 1969. *See* § 1.1307(a) and (b). The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. *See also* § 1.1306 note 1 and § 1.1307(c) and (d);

(10) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order No. 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(12) The licensee shall comply with the requirements of § 1.768;

(13) The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules; and

(14) The licensee shall notify the Secretary, Federal Commissions Commission, Washington, DC 20554, in writing, within thirty (30) days of the date the cable is placed into service, of the date the cable was placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

(h) *Applicants/Licensees.* Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:

(1) Any entity that owns or controls a cable landing station in the United States; and

(2) All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.

(i) *Processing of cable landing license applications.* The Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Commission deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an applicant does not seek streamlined processing, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

(j) *Applications for streamlining.* Each applicant seeking to use the streamlined grant procedure specified in paragraph (i) of this section shall caption its application and any cover letter with ''Application for Cable Landing License—Streamlined Processing Requested.'' Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230; and Defense Information Systems Agency, Code RGC, 701 S. Courthouse Road, Arlington, Va. 22204, and shall certify such service on a service list attached to the application or other filing.

(k) *Eligibility for streamlining.* Each applicant must demonstrate eligibility for streamlining by:

(1) Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;

(2) Demonstrating pursuant to § 63.12(c)(l)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or

(3) Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in paragraph (l) of this section. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

(l) *Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's WTO Destination Market.* Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j) and (k) of this section, must comply with the following requirements:

(1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:

(i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);

(ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and

(iii) The number of outages and intervals between fault report and facility or service restoration; and

(2) File quarterly circuit status reports, within ninety (90) days from the end of each calendar quarter and in the format set out by the § 43.82 of this chapter annual circuit status manual with the exception that activated or idle circuits must be reported on a facility-by-facility basis and derived circuits need not be specified. *See* § 63.10(c)(5) of this chapter.

(m) (1) Except as specified in paragraph (m)(2) of this section, amendments to pending applications, and applications to modify a license, including amendments or applications to add a new applicant or licensee, shall be signed by each initial applicant or licensee, respectively. Joint applicants or licensees may appoint one party to act as proxy for purposes of complying with this requirement.

(2) Any licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license. Such application must include a demonstration that the applicant is not required to be a licensee under paragraph (h) of this section and that the remaining licensee(s) will retain collectively de jure and de facto control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license, and must be served on each other licensee of the cable system.

Note to § 1.767: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include any entity that owns or controls a cable landing station in a foreign market.

3. Add § 1.768 to read as follows:

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

Any entity that is licensed by the Commission (''licensee'') to land or operate a submarine cable landing in a particular foreign destination market that becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, including an entity that owns or controls a cable landing station in that market, shall notify the Commission of that affiliation.

(a) *Affiliations requiring prior notification:* Except as provided in paragraph (b) of this section, the licensee must notify the Commission, pursuant to this section, forty-five (45) days before consummation of either of the following types of transactions:

(1) Acquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.

(b) *Exceptions:* (1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead by filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier, regardless of whether the destination market where the cable lands is a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an international section 214 application or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in a cable landing station or in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the licensee certifies that the destination market where the cable lands is a WTO Member and provides certification to satisfy either of the following:

(i) The licensee demonstrates that its foreign carrier affiliate lacks market power in the cable's destination market pursuant to § 63.10(a)(3) of this chapter (*see* § 63.10(a)(3) of this chapter); or

(ii) The licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation. *See* § 1.767(l).

(c) *Notification after consummation:* Any licensee that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.

Example 1 to paragraph (c). Acquisition by a licensee (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the licensee) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent (25%) but not controlling is subject to paragraph (c) of this section but not to paragraph (a) of this section.

Example 2 to paragraph (c). Notification of an acquisition by a licensee of a hundred percent (100%) interest in a foreign carrier may be made after consummation, pursuant to paragraph (c) of this section, if the foreign carrier operates only as a resale carrier.

Example 3 to paragraph (c). Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent (25%) interest in the capital stock of the licensee may be made after consummation, pursuant to paragraph (c) of this section, if the licensee demonstrates in the post-notification that the foreign carrier lacks market power in the cable's destination market or the licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation.

(d) *Cross-reference:* In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to the requirements of the license granted under § 1.767 or § 1.767(g), the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. *See* § 1.767(g).

(e) *Contents of notification:* The notification shall certify the following information:

(1) The name of the newly affiliated foreign carrier and the country or countries at the foreign end of the cable in which it is authorized to provide telecommunications services to the public or where it owns or controls a cable landing station;

(2) Which, if any, of those countries is a Member of the World Trade Organization;

(3) The name of the cable system that is the subject of the notification, and the

FCC file number(s) under which the license was granted;

(4) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent (10%) of the equity of the licensee, and the percentage of equity owned by each of those entities (to the nearest one percent (1%));

(5) Interlocking directorates. The name of any interlocking directorates, as defined in § 63.09(g) of this chapter, with each foreign carrier named in the notification. *See* § 63.09(g) of this chapter.

(6) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the licensee shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the licensee shall include the actual date of closing.

(7) If a licensee relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the licensee is relying. Licensees relying upon the exceptions in paragraph (b)(2) of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with the reporting requirements in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) If the licensee seeks to be excepted from the reporting requirements contained in § 1.767(l), the licensee should demonstrate that each foreign carrier affiliate named in the notification lacks market power pursuant to § 63.10(a)(3) of this chapter. *See* § 63.10(a)(3) of this chapter.

(g) *Procedure.* After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within fourteen (14) days of the public notice.

(1) If the Commission deems it necessary at any time before or after the deadline for submission of public comments, the Commission may impose reporting requirements on the licensee based on the provisions of § 1.767(l). *See* § 1.767(l).

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section in which the foreign carrier is authorized to operate in, or own a cable landing station in, a non-WTO Member, the licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market by demonstrating either that the foreign carrier lacks market power in that destination market pursuant to § 63.10(a)(3) of this chapter or the market offers effective opportunities for U.S. companies to land and operate a submarine cable in that country. If the licensee is unable to make either required showing or is notified that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

Note to paragraph (g)(2): The assessment of whether a destination market offers effective opportunities for U.S. companies to land and operate a submarine cable will be made under the standard established in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket Nos. 97–142 and 95–22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23946 at paragraph 130, 62 FR 64741, December 9, 1997.

(h) All licensees are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five (45) days after filing. During this period if the information furnished is no longer accurate, the licensee shall as promptly as possible, and in any event within ten (10) days, unless good cause is shown, file with the Secretary in duplicate a corrected notification referencing the FCC file numbers under which the original notification was provided.

(i) A licensee that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty (20) days after filing. Such a request must be made prominently in a cover letter accompanying the filing.

Note to § 1.768: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include an entity that owns or controls a cable landing station in a foreign market.

[FR Doc. 02–789 Filed 1–11–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 98–156; FCC 01–357]

Certification of Equipment in the 24.05–24.25 GHz Band at Field Strengths up to 2500 mV/m

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to allow the operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths of up to 2500 mV/m. Devices operating at these higher levels will be required to use highly directional antennas to minimize the possibility of creating harmful interference to other services in the band. This action will facilitate the introduction of a variety of new, innovative products and services in the band, such as managing the network traffic on a high-speed wireless internet service or connecting a multiple building intra-office network.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *nmcneil@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket 98–156, FCC 01–357, adopted December 11, 2001 and released December 14, 2001. The full text of this document is available on the Commission's internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* e-mail, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. In the *NPRM* in this proceeding, the Commission proposed to modify § 15.249 to allow operation of fixed point-to-point devices in the 24.05–24.25 GHz band segment of the 24 GHz spectrum in accordance with the field strength limit and antenna gain requirements requested by Sierra Digital Communications, Inc., 63 FR 50185, September 21, 1998. This *Report and Order* amends § 15.249 to permit the

operation of unlicensed point-to-point transmitters in the 24.05–24.25 GHz band with field strengths up to 2500 mV/m measured at 3 meters, provided that such devices use directional antennas with gains of at least 33 dBi or a main lobe beamwidth not exceeding 3.5 degrees. Using a directional antenna with either the specified minimum gain or maximum main lobe beamwidth will produce a narrow radiation pattern thereby minimizing the area over which interference to other devices may occur. We find that it is in the public interest to allow such operations on an unlicensed basis to supplement the growing demand for licensed point-to-point facilities to satisfy important communications needs. As Sierra observes, increasing the field strength limit will promote greater use of part 15 unlicensed devices for purposes such as emergency restoration of communications in disaster situations, low-cost telecommunications delivery in rural areas, and other beneficial applications.

2. ARRL argues that the amateur service in the 24.05–24.25 GHz band uses sensitive receivers that will be threatened by part 15 devices operating pursuant to the proposed rules. We do not agree that there will be an increased risk of interference to amateur operations in the 24.05–24.25 GHz band segment. The use of a directional antenna will change the shape of the radiated radio frequency field but not the amount of geographic area contained in that field. While signals will travel further in the intended direction of communication, they will be limited in all other directions. As Sierra demonstrated in response to ARRL's concerns, the total area encompassed by the radiated field of the directional antenna will be equal to or less than the area encompassed by the radiated field of a lower-powered omni-directional antenna. We also note that § 15.245 of the rules allows field disturbance sensors to operate in the same band at 2500 mV/m. These devices have been authorized to operate for years with no adverse affects to other users in the band, including amateur operations. We thus find that, devices operating with field strengths up to 2500 mV/m with a directional antenna as prescribed herein will have the same or less interference potential as other devices currently authorized under part 15. Our decision here is also consistent with our earlier ruling in the *Report and Order* in ET Docket No. 96–8 wherein the Commission stated that the directional antenna requirement adopted for spread spectrum transmitters would ensure that the area over which harmful interference can occur is equivalent to what would be caused by a transmitter using an omni-directional antenna operating at a lower output power.

3. In an effort to ensure, to the greatest extent possible, that devices operating in accordance with these regulations will not create unwanted adjacent band interference, we are imposing more stringent operating conditions than proposed in the *NPRM.* Although the *NPRM* proposed a frequency stability requirement of only 0.003%, we will require these devices to maintain their transmitting frequency within 0.001% of nominal. Requiring 0.001% frequency stability in lieu of 0.003% will ensure that emissions remain within the authorized transmission bandwidth and minimize drift into the adjacent bands which are allocated on a primary basis to the amateur satellite service (24.00 24.05 GHz) and the DEMS (24.25–24.45 GHz) both of which are susceptible to interference from relatively low-level signals. Additionally, we are requiring, under § 15.249, that the field strength of emissions outside of the 24.05–24.25 GHz band, except for harmonics, be attenuated by at least 50 dB below the fundamental or to the general emissions limits contained in § 15.209 of the Commission's rules, whichever is the lesser attenuation.

4. Finally, we will address harmonic emissions. Section 15.209 set the limit for out-of-band emissions of part 15 devices, which is 500 uV/m at 3 meters. Harmonic emissions from transmitters operating under § 15.249 are permitted at different levels, generally higher, than other out-of-band emissions, and those limits are specified in that section. Section 15.205(b), however, provides that the § 15.209 limits shall not be exceeded in the restricted bands. All of the harmonics of the 24 GHz transmitters at issue here fall into the restricted band above 38.6 GHz, and thus must observe the 15.209 limits, rather than the less restrictive 15.249 limits. The Commission is considering in a separate proceeding, the possibility of removing the § 15.209 limits for some bands above 38.6 GHz, among other issues. For more information see *Notice of Proposed Rulemaking* in ET Docket 01–278, released October 15, 2001, 66 FR 59209, November 27, 2001.

5. In conclusion, we find that the public interest is served by permitting unlicensed point-to-point devices to operate at 2500 mV/m, under the conditions discussed, in the 24.05–24.25 GHz band. The band has accommodated unlicensed transmissions, government radar, and amateur facilities with no major conflicts. By allowing a greater variety of systems to occupy the band, we will provide the opportunity for innovative products and services to be made available to the American public as quickly as demand dictates.

Final Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (NPRM).[2] The Commission sought written public comment on the proposal in the NPRM, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in the Report and Order conforms to the RFA.[3]

A. Need for and Objective of the Rules

7. The rule changes adopted in this *Report and Order* will help satisfy the growing demand for readily available unlicensed systems in the 24 GHz band.[4] The rules will allow fixed point-to-point transmitters to operate in the 24.05–24.25 GHz band at field strengths of up to 2500 mV/m. This action will facilitate the introduction of a variety of new services to the band. The requirement to use directional antennas will minimize the possibility of creating harmful interference to existing services while, at the same time, providing for communication links of greater distances.

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

8. No comments were filed in direct response to the IRFA. Moreover, no comments in response the *NPRM* discussed small business-related issues.

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

9. 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 rules adopted herein.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning

[1] 5 U.S.C. 603.

[2] *See* ET Docket 98–156, 63 FR 50185 (1998).

[3] *See* 5 U.S.C. 604.

[4] Unlicensed transmitters are permitted to operate in the 24 GHz band pursuant to certain conditions. *See Report and Order* at paragraph 2. *See also* 47 CFR 15.249.

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

as the term ''small business concern'' under the Small Business Act.[7] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[8]

10. The Commission has not developed a definition of small entities applicable to unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees on order to qualify as a small business concern.[9] Census Bureau data indicates that there are 858 U.S. companies 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.[10]

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

11. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The changes adopted in this proceeding do not change any of the current reporting or recordkeeping requirements. Further, the regulations add permissible methods of operation and do not require the modification of any existing products.

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

12. The rule changes adopted in this *Report and Order* will permit manufacturers, including small entities, to market more diverse products in the 24 GHz band. The American Radio Relay League filed comments suggesting that the Commission also require manufacturers to maintain detailed records of their customers' installations of these devices. This information would be given to ARRL periodically to aid in coordination. The Commission believes that compliance with this additional regulation would create an undue economic burden for device manufacturers, especially smaller entities. The Commission noted that instituting such a rule could lead to more expensive part 15 equipment and slower speed to market. Therefore, the Commission declined to adopt such a requirement.

F. Report to Congress

13. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[11] In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA.

14. It is Further Ordered that 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 in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Amend § 15.249 as follows:

(a) Revise paragraph (a) introductory text;

(b) Redesignate paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f);

(c) Add new paragraph (b); and

(d) Revise newly designated paragraph (e).

§ 15.249 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, 5725–5875 MHz, and 24.0–24.25 GHz.

(a) Except as provided in paragraph (b) of this section, the field strength of emissions from intentional radiators operated within these frequency bands shall comply with the following:

* * * * *

(b) Fixed, point-to-point operation as referred to in this paragraph shall be limited to systems employing a fixed transmitter transmitting to a fixed remote location. Point-to-multipoint systems, omnidirectional applications, and multiple co-located intentional radiators transmitting the same information are not allowed. Fixed, point-to-point operation is permitted in the 24.05–24.25 GHz band subject to the following conditions:

(1) The field strength of emissions in this band shall not exceed 2500 millivolts/meter.

(2) The frequency tolerance of the carrier signal shall be maintained within ±0.001% of the operating frequency over a temperature variation of -20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(3) Antenna gain must be at least 33 dBi. Alternatively, the main lobe beamwidth must not exceed 3.5 degrees. The beamwidth limit shall apply to both the azimuth and elevation planes. At antenna gains over 33 dBi or beamwidths narrower than 3.5 degrees, power must be reduced to ensure that the field strength does not exceed 2500 millivolts/meter.

* * * * *

(e) As shown in § 15.35(b), for frequencies above 1000 MHz, the field strength limits in paragraphs (a) and (b) of this section are based on average limits. However, the peak field strength of any emission shall not exceed the maximum permitted average limits specified above by more than 20 dB under any condition of modulation. For point-to-point operation under paragraph (b) of this section, the peak field strength shall not exceed 2500 millivolts/meter at 3 meters along the antenna azimuth.

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[FR Doc. 02–871 Filed 1–11–02; 8:45 am]

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[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration 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**.''

[8] 15 U.S.C. 632.

[9] *See* 13 CFR 121.201, NAICS Code 334220 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

[10] *See* U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663 (NAICS Code 334220).

[11] *See* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket No. 01–14; FCC 01–328]

2000 Biennial Regulatory Review—Spectrum Aggregation Limits for Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's reexamination of the need for the Commercial Mobile Radio Service (CMRS) spectrum aggregation limit, or ''spectrum cap,'' and cellular cross-interest rules as part of its 2000 biennial review of the Commission's regulations, pursuant to section 11 of the Communications Act of 1934, as amended (Communications Act). The intended effects of this action are to ''sunset'' the spectrum cap rule effective January 1, 2003; permit the Commission to consider, in conjunction with the United States Department of Justice (DOJ), substantive and processing guidelines for the Commission's case-by-case review of transactions that would raise concerns similar to those that the spectrum cap was designed to address; raise the spectrum cap to 55 MHz in all markets during the transition period; and eliminate the cellular cross-interest rule in Metropolitan Statistical Areas (MSAs), while retaining it in Rural Service Areas (RSAs).

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Lauren Kravetz Patrich or John Branscome, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order* (''*R&O*'') in WT Docket No. 01–14, FCC 01–328, adopted November 8, 2001, and released December 18, 2001, is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 Twelfth Street, S.W., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 Twelfth Street, S.W., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text is also available under the file name fcc01328.doc on the Commission's Internet site at *www.fcc.gov.*

Synopsis of Order

I. Background

A. CMRS Spectrum Cap

1. *CMRS Spectrum Aggregation Limit.* The CMRS spectrum cap provides that ''[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS * * * shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area, except that in Rural Service Areas (RSAs), * * * no licensee shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any RSA.'' 47 CFR 20.6(a). Determining whether a ''significant overlap'' exists is necessary because of the use of different licensing and service areas for cellular, broadband Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) spectrum. When a PCS license and a cellular or SMR license are involved, a significant overlap exists when ten percent or more of the population of the designated PCS licensed service area is within the Cellular Geographic Service Area (CGSA) or SMR service area(s) in question.

2. *History of the CMRS Spectrum Cap.* The CMRS spectrum cap was established in 1994, in anticipation of PCS licensing, and in recognition that direct competition was likely to develop among cellular, broadband PCS, and SMR. Previously, the Commission had imposed service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership. In adopting the CMRS spectrum cap to complement these latter two rules, the Commission found that an overall cap applicable to cellular, broadband PCS, and SMR spectrum would add certainty to the marketplace without sacrificing the benefits of pro-competitive and efficiency-enhancing aggregation. The Commission explained that, if licensees were to aggregate sufficient amounts of CMRS spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers. The Commission determined that the imposition of a cap on the amount of covered spectrum that a single entity could control in any one geographic area would limit the ability of any entity to increase prices artificially. The Commission also found that a cap on broadband PCS, SMR, and cellular spectrum holdings would prevent licensees from artificially withholding capacity from the marketplace. The Commission concluded that a 45 MHz cap provided a ''minimally intrusive means'' for ensuring that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation. *Third Report and Order* (59 FR 59945, November 21, 1994).

3. In 1996, in light of the U.S. Court of Appeals for the Sixth *Circuit's ruling in Cincinnati Bell Telephone Co.* v. *FCC* (69 F.3d 752 (6th Cir. 1995)) remanding the cellular/PCS cross-ownership restriction, the Commission eliminated the service-specific limitations on the aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership, and decided to rely solely on the 45 MHz CMRS spectrum cap to ensure that multiple service providers would be able to obtain broadband PCS spectrum and thereby facilitate the development of competitive markets for wireless services. The Commission analyzed potential market concentration and again found that a 45 MHz spectrum cap was sufficient ''to avoid excessive concentration of licenses and promote and preserve competition'' while ''maintaining incentives for innovation and efficiency.''

4. In the *First Biennial Review Order* (''*First Biennial Review Order*'') (64 FR 54564, October 7, 1999), the Commission decided substantially to retain the CMRS spectrum cap, together with the cellular cross-interest rule, but ordered modifications to reflect circumstances in rural areas and to permit passive institutional investors to acquire greater non-attributable interests in CMRS carriers. The Commission concluded that the spectrum cap remained a simple and effective means of mitigating the competitive consequences of the spectrum-related barriers to entry in CMRS markets, and found that the 45 MHz limit struck the proper balance (in non-rural areas) between preserving opportunities for competitive entry and permitting carriers to achieve economies of scope and scale. The Commission did, however, raise the cap to 55 MHz in RSAs. This decision was based on findings that the potential consumer benefits in rural areas from competitive, facilities-based entry were likely to be limited by the economics of offering service to lower-density populations. The Commission also amended the spectrum cap rule to provide that equity interests of up to forty percent held by

passive institutional investors are not attributable. At the same time, the Commission adopted a waiver process to meet the spectrum requirements for third-generation (3G) and other advanced wireless services until additional spectrum for next generation applications could be allocated.

B. Cellular Cross-Interest Rule

5. *Cellular Cross-Interest Rule.* Section 22.942 of the Commission's rules limits the ability of parties to have interests in cellular carriers on different channel blocks in a single geographic area. 47 CFR 22.942. To the extent licensees on different channel blocks have any degree of overlap between their respective CGSAs, the rule prohibits any entity with an attributable interest in one licensee from having a direct or indirect ownership interest of more than five percent in the other licensee. An attributable interest is defined generally to include an ownership interest of twenty percent or more, as well as any controlling interest. However, an entity may have non-controlling and otherwise non-attributable direct or indirect ownership interests of less than twenty percent in licensees for different channel blocks in overlapping CGSAs. Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

6. *History of the Cellular Cross-Interest Rule.* The cellular cross-interest rule was adopted in 1991, when cellular licensees were the predominant providers of mobile voice services. In adopting this rule, the Commission stated that ''in a service area where only two cellular carriers are licensed per market, the licensee on one frequency block in a market should not own an interest in the other frequency block licensee in the same market.'' Thus, the Commission adopted restrictions on a party's ability to hold ownership interests in both cellular licensees in the same geographic area ''[i]n order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.'' In the *First Biennial Review Order,* the Commission determined that the cellular cross-interest rule was still required to protect against substantial anticompetitive threats from common ownership between the two cellular carriers in any given geographic area. The Commission found that cellular carriers served approximately eighty-six percent of nationwide mobile telephone subscribers at the end of 1998, and determined that the percentage was less than seventy in only a few major metropolitan markets. However, because competition from other services had increased on the whole since the rule's inception in 1991, the Commission relaxed the rule's attribution standards to the current limits described above.

C. Notice of Proposed Rulemaking

7. In the *Notice of Proposed Rulemaking* (''*NPRM*'') (66 FR 9798, February 12, 2001) (*corrected* at 66 FR 10567, February 15, 2001) in this proceeding, the Commission initiated a reexamination of the need for CMRS spectrum aggregation limits as part of its 2000 biennial regulatory review of the Commission's telecommunications regulations. Section 11 of the Communications Act requires the Commission, every two years, to review all regulations that apply to ''the operations or activities of any provider of telecommunications service'' and to ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' The *NPRM* initiated the Commission's second comprehensive review of the CMRS spectrum cap and cellular cross-interest rules, the two regulations that currently limit the aggregation of broadband CMRS spectrum.

8. The *NPRM* requested public comment, including the submission of specific market data and studies, to assist the Commission's determination of whether the CMRS spectrum aggregation rules are no longer necessary in the public interest and, if they are necessary, whether the Commission's existing spectrum limits should be modified. First, comment was requested on whether spectrum aggregation limits, including the cellular cross-interest rule, continue to enhance meaningful competition in today's CMRS marketplace. In this regard, comment was sought on the development of meaningful economic competition, as well as the potential competitive consequences of consolidation that may occur without spectrum aggregation limits. Next, comment was requested on spectrum management and other regulatory considerations, particularly in the context of spectrum suitable for broadband CMRS. Under this inquiry, the Commission sought to examine any costs that the spectrum aggregation limits may impose on the development of advanced wireless services, the possible benefits of prophylactic standards, and whether these standards promote efficiency. In addition, comment was sought on how recent international developments should affect the Commission's public interest determination.

9. The Commission also sought comment on the implications for its processes of DOJ's antitrust law enforcement responsibilities. The Commission asked whether it should defer to DOJ in CMRS license transfers, and, if so, what form such deference should take. Specifically, the Commission asked whether all transfers resulting in consolidation of spectrum below a certain threshold should be exempt from competitive analysis under section 310(d) of the Communications Act. The Commission acknowledged that antitrust laws may place adequate focus on mergers that threaten to curtail actual competition. Therefore, the Commission asked whether it may, and should, refrain from independent review of the competitive effects of a transaction that is subject to some specified level of DOJ review, and if so, what that level should be.

10. The *NPRM* also requested comment on whether specific attributes of the CMRS spectrum cap and cellular cross-interest rules should be modified, if those rules are generally retained, to allow some of the benefits that may arise from additional cross-ownership interests. To the extent that certain revisions would reduce any costs of the rules or promote public interest objectives, the Commission sought comment on how to implement them without significantly increasing barriers to entry for new competitors or reducing benefits to wireless consumers.

II. Discussion

A. Standard for Decision

1. Section 11 of the Communications Act

11. The Telecommunications Act of 1996 (1996 Act) (Public Law No. 104–104, 110 Stat. 56 (1996)) significantly amended the Communications Act to permit and encourage competition in various communications markets. Congress anticipated that the development of competition would lead market forces to reduce the need for regulation. Section 11 of the Communications Act, which was added by the 1996 Act, provides that every two years the Commission shall review all regulations that apply to ''the operations or activities of any provider of telecommunications service'' and ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' Section 11 further provides that in carrying out this review, the Commission ''shall repeal or

modify any regulation it determines to be no longer necessary in the public interest.''

12. Consistent with section 11, the Commission stated in the *NPRM* that its fundamental inquiry is whether, as a result of meaningful economic competition among providers of telecommunications services, spectrum aggregation limits are no longer necessary in the public interest. The Commission sought comment on what constitutes ''meaningful economic competition'' under section 11, and to what degree the relevant competitive conditions have changed since the Commission's last biennial review of these rules. If meaningful economic competition were found to exist, the Commission asked whether this would mean that spectrum aggregation limits have served their purpose and are no longer in the public interest, or whether public interest considerations nevertheless would warrant continued use of spectrum aggregation limits.

13. Commenters differ on how section 11 should be applied and whether there might be public interest reasons to retain spectrum aggregation limits if meaningful economic competition exists. The Commission, however, concludes that it need not, for purposes of this proceeding, go beyond the plain meaning of the text of section 11 of the Communications Act. The language places an obligation on the Commission to ''determine'' if the regulation in question ''is no longer necessary in the public interest as the result of meaningful economic competition.'' Section 11 requires the Commission to determine ''whether any of these regulations are no longer in the public interest because competition between providers renders the regulation no longer meaningful.'' The Communications Act then explicitly provides that ''the Commission *shall* repeal or modify'' any regulation that it determines is no longer necessary in the public interest as the result of meaningful economic competition. The statutory language does not impose any particular burdens on the opponents or proponents of a particular rule, but rather places the burden on the Commission to make the requisite determinations. In exercising its obligation under section 11, the language suggests that the Commission must examine why the rule was ''necessary'' in the first place and whether it is necessary any longer. Thus, in making the determination whether a rule remains ''necessary'' in the public interest once meaningful economic competition exists, the Commission must consider whether the concerns that led to the rule or the rule's original purposes may be achieved without the rule or with a modified rule.

14. The primary public interest purpose underlying the original adoption of the spectrum aggregation limits was to promote pro-competitive ends in CMRS markets. In initially setting the spectrum cap in 1994, the Commission's goal was to ''discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency.'' The Commission found that its ''goal of preventing anticompetitive outcomes'' could be accomplished by creating a cap on broadband PCS, cellular, and SMR licensees, which would ''prevent licensees from artificially withholding capacity from the market.'' Consistent with this goal, the Commission stated that the spectrum cap sought ''to promote diversity and competition in mobile services, by recognizing the possibility that mobile service licensees might exert undue market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum'' Furthermore, the absence of a spectrum cap could undermine other statutory goals related to the promotion of competition, ''such as the avoidance of excessive concentration of licenses and the dissemination of licenses among a wide variety of applicants.'' In addition, the Commission found that the cap not only promoted competition, but also benefited the public interest by allowing review of CMRS acquisitions in an administratively simple manner and lending certainty to the marketplace. In 1996 and 1999, the Commission reaffirmed the primary public interest purpose of promoting pro-competition ends in the CMRS markets. In 1996, the Commission also found that the spectrum cap, in addition to other tools at its disposal, furthered the goals of section 309(j) of the Communications Act. *CMRS Spectrum Cap Report and Order* (61 FR 33859, July 1, 1996) (*corrected* at 61 FR 51233, October 1, 1996). (The Commission notes that there are other tools to achieve goals other than competition, including case-by-case review, as well as prescribing license area designations and bandwidth assignments, and using bidding credits to create opportunities for new entrants.) In adopting the cellular cross-interest rule, the Commission acted ''[i]n order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.''

2. Meaningful Economic Competition

15. In the case of the spectrum cap and cellular cross-interest rules, the Commission's inquiry focuses on the state of competition in the consumer markets for CMRS. At the same time, the Commission recognizes that spectrum is an input in CMRS markets. Indeed, this recognition prompted adoption of the spectrum cap as a means of ensuring CMRS competition in the first place. Although participants in the mobile telephony and CMRS spectrum markets are largely the same entities under current conditions, this could change if leasing arrangements become more common. *Secondary Markets Policy Statement* (65 FR 80367, December 21, 2000). Again, the Commission emphasizes that the markets with which it is principally concerned are the output markets for services, and that conditions in the input markets provide only a partial proxy measure of competition in the output markets. Nonetheless, in the context of the output market, the state of control over the spectrum input is a relevant factor.

16. In evaluating CMRS markets, the Commission considers both actual and potential competition. In general, potential competition can be as important as actual competition in promoting desirable outcomes. In the case of CMRS, however, it appears that actual competition among those firms already providing service has been the most significant factor in the gains that have been achieved in recent years. There remains relatively little potential for additional entry into urban markets in the near term, because most licenses for currently allocated spectrum have been constructed and put into service. In rural markets, a significant number of licenses have not yet been put into service, but demographic and geographic conditions generally appear to render additional large-scale entry economically difficult to support. As additional CMRS-suitable spectrum becomes available, the overall effect on the CMRS marketplace of potential competition could change.

3. Necessity for Rules in the Public Interest

17. In determining whether its spectrum aggregation limits remain necessary in the public interest, the Commission considers the original purposes for which the rules were promulgated. The purpose underlying the spectrum aggregation limits was to promote competition in CMRS markets. An important consideration in determining the necessity for regulation is the availability of other, less

burdensome tools to achieve these ends. In the case of the CMRS spectrum aggregation limits, these tools include case-by-case review of transactions by the Commission and DOJ, as well as the Commission's ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. In addition, the Commission is also obligated, pursuant to section 332(c)(1)(C) of the Communications Act, to continue to review (as it has done six times already) the state of competition among CMRS providers. Specifically, this provision states:

> The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. 47 U.S.C. 332(c)(1)(C).

The Commission's most recent report, issued this year, has guided its decision in this proceeding, and future reports will continue to provide a useful tool for overseeing the changes, if any, in competitive market conditions. *Sixth Annual CMRS Competition Report* (''*Sixth Annual CMRS Competition Report*'') (16 FCC Rcd 13350 (2001)). Moreover, the Commission also has at its disposal various enforcement tools to ensure that CMRS carriers, which are common carriers under section 332(c) and key provisions of Title II of the Communications Act, 47 U.S.C. 332(c), 201, 202, 208, do not engage in conduct that is anti-competitive or otherwise harm consumers due to excess concentration of spectrum.

B. Analysis of Competition in the Mobile Telephony Markets

18. The Commission begins its analysis by considering the state of economic competition. Various indicators confirm the presence of meaningful economic competition in markets for CMRS. As the Commission described in the *Sixth Annual CMRS Competition Report,* and as commenters generally agree, mobile telephony markets have experienced and continue to experience strong growth, increased competition, and active innovation. (Although the Commission noted that it could not warranty the accuracy or completeness of the individual data in the *Sixth Annual CMRS Competition Report,* all of which were taken from publicly available sources, the Commission finds that, cumulatively, these data are more than adequate to inform its evaluation of meaningful economic competition.) The Commission also finds it important that competition in these markets has progressed dramatically, not only since 1994, but since its last biennial review.

19. *Number of Competitors and Concentration.* One basic indicator of meaningful economic competition is that most Americans have a choice of obtaining CMRS from several different providers of service. As of the end of 2000, about ninety-one percent of U.S. residents lived in a county that was served, at least in part, by three or more different mobile telephony providers, and seventy-five percent of the U.S. population lived in a county where five or more providers offered service. (Because the Commission's analysis was limited to publicly available sources of information, this coverage percentage is based on the number of operators serving any portion of a particular county. Consequently, some counties included in this analysis may have only a small amount of coverage from a particular provider.) Furthermore, over 133 million people lived in counties with six or more mobile telephony providers, an increase of thirty-five percent over the previous year, and thirty-four million people lived in counties served by seven or more providers, a one-year increase of 170 percent. By contrast, when the spectrum cap was first promulgated in 1994, in all but the few markets where Nextel had then launched service, consumer choice was limited to two cellular providers.

20. Measures of market concentration in the record show a substantial continuing decline in concentration in most local CMRS markets. The Commission finds that considerable entry has occurred and that meaningful competition is present, particularly given the presence of such earmarks of competition as falling prices, increasing output, and improving service quality and options. Specifically, concentration in CMRS markets, as measured by subscriber share, is falling. Calculations submitted by economist John Hayes in both this record and the previous biennial review proceeding show that Herfindahl-Hirschman Indices (HHIs) in the twenty-five largest markets, calculated based on estimated subscribed customers, have fallen by an average of fifteen to twenty-five percent over the last two years. This downward trend in concentration may be attributed in part to the continued construction of new entrants' networks, which has made these mobile telephony providers more viable competitors.

21. On the other hand, other measures of market concentration reveal moderate to high concentration levels. Using CMRS spectrum share as the capacity measure, the Commission has calculated HHIs of 1,270 to 1,801 for the fifty most populous MSAs, and 1,246 to 2,405 for a sampling of eighty counties in RSAs. These figures are generally consistent with the capacity'based HHI calculations submitted by various commenters. The Commission emphasizes, however, that caution is appropriate in employing such measures, whether they reveal a positive or negative indication of concentration. Although more concentrated markets can be less competitive and more vulnerable to anticompetitive activity than less concentrated markets, moderate to high concentration is not necessarily a threat to competition. For example, the Commission has previously found that ''an HHI analysis alone is not determinative and does not substitute for its more detailed examination of competitive considerations.'' In the case of CMRS markets, for example, limits to economies of scale, technological compatibility issues, difficulties in finding a willing seller at a reasonable price, and capital market constraints limit consolidation. Moreover, antitrust review by the DOJ and section 310(d) review by the Commission continue to serve as protection against levels of consolidation that would impair competition. Furthermore, HHI measures function as indicators of the likely competitive situation—guidelines to which other information is added, as under the DOJ/Federal Trade Commission (FTC) approach—rather than as the single factor upon which to make competitive judgments, including the judgment of whether to retain the spectrum cap rule. As the *DOJ/FTC Merger Guidelines* state, ''[b]ecause the specific standards set forth in the guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under antitrust laws.''

22. Based on the record before the Commission and publicly available evidence, however, there appears to be a disparity in the amount of actual competition existing in MSAs versus RSAs. In MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers serving some portion of the county, while in RSAs, twenty-four percent of counties have four or more facilities-based CMRS

providers. Further, in over half of RSA counties, two or fewer licensed mobile telephony carriers are currently providing service. Because these numbers include carriers that may be offering service in only a small portion of a county, they may overstate the amount of actual facilities-based competition, especially in RSAs. Moreover, the Commission's licensing records show that gaps in the footprints of the nationwide carriers tend to be greater in RSAs than in MSAs. Of the fifty most populous MSAs, forty have five licensed nationwide carriers, not counting Nextel, and the other ten have four. In a sampling of fifty average population RSA counties, by contrast, sixteen have five nationwide carriers, sixteen have four, and eighteen have fewer than four. In a sampling of thirty less populated RSA counties, eight have five nationwide carriers, nine have four, and thirteen have fewer than four. Therefore, consumers in rural areas appear to have fewer choices in terms of providers, pricing plans, and service offerings than consumers in MSAs. Commenters generally agree that rural markets have significantly less competition than metropolitan areas in large part due to population density and economics.

23. *Benefits to Consumers of Competition.* As the CMRS marketplace has developed, consumers in both MSAs and RSAs have realized the benefits of competition in the form of increased output, lower prices, and increased diversity of service offerings. For example, from 1993 to 2000, the number of subscribers using mobile phones jumped 584 percent, the amount of revenue the sector generated climbed 384 percent, and the number of people employed in the industry grew 364 percent. In addition, as the Commission described in the *Sixth Annual CMRS Competition Report,* and as commenters generally agree, prices in mobile telephony markets are falling at an accelerating rate. During 2000, the cellular telephone component of the Consumer Price Index (CPI) produced by the United States Department of Labor decreased by 12.3 percent, while the overall CPI increased by 3.4 percent. In comparison, the cellular telephone component of the CPI from December 1997 to January 1999 decreased by 9.1 percent (8.4 percent annualized), while the overall CPI increased by 1.9 percent. Several studies indicate that the entrance of new competitors into mobile telephony markets continues to reduce prices. Furthermore, mobile telephony service providers are offering new and innovative pricing plans. Most of the major carriers offer nationwide flat-rate, digital pricing plans, and several large carriers now offer regional flat-rate, digital pricing plans as well. Further, several carriers provide international roaming services to their customers. Mobile telephony providers are also offering technologically innovative services including Short Message Service (SMS), e-mail, and web-based applications. In addition, ''churn * * * and continued expansion of mobile networks into new and existing markets demonstrate a high level of competition for mobile telephony customers.''

24. To a certain degree, mobile telephony services have begun to compete with wireline services. For some, wireless service is no longer a complement to wireline service but has become the preferred method of communication. According to a recent survey by the Yankee Group, about three percent of mobile telephony subscribers rely on their wireless phone as their only phone. In another survey conducted in January 2000, twelve percent of respondents said they purchased a mobile phone instead of installing an additional wireline phone. In a survey performed for the Consumer Electronics Association, three in ten mobile phone users, and forty-five percent of mobile phone users aged eighteen to thirty-four years old, stated they would rather give up their home telephone than their mobile phone. In some areas, mobile phone use has begun to erode wireline revenue due to ''technology substitution,'' that is, the substitution of new technologies for existing ones. BellSouth, for example, stated in February 2001 that it was exiting the payphone business in part due to business lost to mobile phones.

25. A few mobile carriers have begun offering service plans designed to compete directly with wireline local telephone service. For example, Leap, through its Cricket subsidiary, now offers its Comfortable Wireless mobile telephone service in over a dozen markets. Leap's service allows subscribers to make unlimited local calls and receive calls from anywhere in the world for a flat rate of approximately $30 per month. In November 2000, Leap also claimed that sixty percent of its customers use their wireless phones as their primary phone. US Cellular, ALLTEL, and Rural Cellular Corporation similarly offer flat-rate or nearly flat-rate service plans in select markets. Several CMRS providers have received Eligible Telecommunications Carrier status, enabling them to receive universal service funding in certain states, and some carriers are using cellular or broadband PCS spectrum to offer fixed wireless services.

26. Consumers have also derived benefits in recent years from combinations as some operators have expanded their licensed service areas through acquisitions and swaps to create nationwide service providers. There are currently six nationwide mobile telephony operators: AT&T, Cingular, Nextel, Sprint, Verizon, and VoiceStream. The Commission has concluded previously that mobile telephony service providers with nationwide service areas can achieve certain economies of scale and increased efficiencies compared to operators with smaller service areas.

27. *Barriers to Entry.* One potential threat to the continued existence of meaningful economic competition in CMRS markets is the barrier to entry posed by the limited availability of spectrum. Ease of entry is an important factor when determining if firms in a given product and geographic market will be able to exercise market power. ''[E]ntry is * * * easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern.'' In particular, we note that antitrust authorities ''will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact.'' Unfettered market competition forces prices to the level of production costs. Markets function optimally only if one or more firms are able to enter a market or expand current production swiftly and effectively in response to the elevation of prices (or degradation of service) by one or more firms attempting to exercise market power. Therefore, in evaluating the state of the market the Commission considers whether barriers to entry exist and, if so, how pronounced these barriers to entry are, with the ultimate goal of determining whether potential entry would be timely, likely, and sufficient to discipline the market.

28. The requirement to obtain access to spectrum constitutes a barrier to facilities-based entry into the CMRS marketplace because the supply of suitable spectrum is limited. Facilities-based mobile telephony service cannot be offered without access to suitable spectrum, and a government license is required to use spectrum to provide CMRS. Some commenters argue that, because CMRS spectrum allocations have been made, this barrier to entry has been reduced. Other commenters, however, argue that it is typically difficult to acquire the spectrum necessary to enter a CMRS market. One

commenter, in particular, emphasizes that the finite amount of spectrum suitable for CMRS is an ''insurmountable barrier to entry.'' The Commission finds that the limited amount of spectrum suitable for CMRS available today creates a significant barrier to entry, at least in MSAs. Most of the spectrum currently subject to the cap either has been assigned or is being considered for assignment to the high bidder at auction. In most cases, the high bidder is either an existing market participant or its affiliate. Although some of this spectrum is currently unused or underused, the total pool of such spectrum is finite, and the amount that is not controlled by a provider that has launched service, particularly in MSAs, is small.

29. Some commenters argue that availability of spectrum is not a significant barrier to entry because other spectrum, not covered by the cap, is a viable substitute for the provision of mobile telephony services. Specifically, commenters identify spectrum allocated for Mobile Satellite Service (MSS), big Low Earth Orbit (LEO) satellite service, Multipoint Multichannel Distribution Service and Instructional Television Fixed Service (MDS/ITFS), Wireless Communications Service (WCS), and CMRS other than cellular, broadband PCS, and SMR, as well as spectrum that has been (or is soon likely to be) reallocated from television Channels 52–59 and 60–69. Much of this spectrum, however, either is not currently allocated for mobile terrestrial use, is subject to technical and use restrictions that prevent offering of full mobile telephony services, or has insufficient capacity to support significant mobile telephony competition. The Commission believes the spectrum bands that are most likely to support additional competition to the services offered over cellular, broadband PCS, and SMR spectrum in the reasonably near future are the 1.7 and 2.1 GHz bands that are being considered for mobile allocation in the Commission's so-called 3G proceeding, and the bands reallocated from television Channels 60–69. However, this spectrum is still at least several months away from being assigned, and after assignment it will take time for incumbent users to be relocated and following that for licensees to build out their networks. Thus, although the Commission expects that 3G and Channels 60–69 spectrum will offer some potential for near-term entry over the next few years, the availability of spectrum suitable for CMRS remains a barrier to entry in the near term.

30. Nonetheless, there are factors that moderate concern regarding the spectrum access barrier to entry. In particular, the need for direct access to spectrum is not absolute because carriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (MVNO) arrangement. However, it is not clear that these options have more than a limited role today. The transition period the Commission adopts today also helps to minimize the problem of spectrum access because, while future allocations do not respond to the needs of the marketplace today, the Commission expects that additional spectrum will be available at the end of the transition period, or shortly thereafter.

31. Although access to spectrum does not appear to be a substantial barrier to entry in RSAs, as in these areas there is typically a significant amount of unused spectrum, the other costs of serving high-cost and low-density areas may make it unlikely that competition in RSAs will increase to a level rivaling that of MSAs. Specifically, the cost of building out a network with pervasive coverage is likely to be higher in rural than in urban areas (especially for digital networks on 1.9 GHz PCS spectrum with lower power handsets), and revenue potential is lower. Thus, the potential revenue from initiating or expanding service in an RSA may not be sufficient to cover the costs of building out the network, including any opportunity costs associated with directing resources to rural buildout instead of enhancing the carrier's network in urban areas. In addition, it would likely be time-consuming for a new entrant to access sufficient capital, build out its network to a sufficient degree to effectively market its services, and attract a sufficient subscriber base to discipline the market. Although the Commission does not have sufficient record evidence to evaluate the likely development of the market in RSAs, the underlying economics appear to make it unlikely that competition in RSAs will evolve in the near term to rival that in MSAs.

32. *Other Issues.* Various commenters discuss the potential for CMRS providers to foreclose entry by anticompetitive warehousing of spectrum. Some commenters argue that it is unlikely that carriers have an incentive to warehouse spectrum because the cost of acquiring spectrum and meeting the Commission's buildout requirements is high. Other commenters, however, argue that CMRS providers have an incentive to warehouse spectrum either by purchasing more spectrum than can be used or by investing in inefficient technologies. Even if a carrier did not deliberately set out to foreclose competition, one commenter contends that the profits from doing so may be an attractive side effect of spectrum aggregation. The Commission does not have evidence that firms are currently holding excess spectrum in order to deter entry or that the benefits of excluding competitors would exceed the cost of acquiring spectrum and the free-rider problem of several incumbents benefiting from one incumbent's expenditure. However, it is at least a threshold possibility that because the supply of suitable spectrum is limited, firms in CMRS markets might choose to overinvest in spectrum in order to deter entry, depending on the costs of doing so.

33. One commenter also suggests that collusion among CMRS providers may warrant ongoing consideration. It notes that pricing plans for CMRS offerings are similar among the national carriers, and price comparisons of these plans can easily be performed, facilitating price coordination. Further, the commenter argues that experience in the marketplace shows carriers behaving in a largely oligopolistic fashion by offering largely identical products at prices far above their marginal costs. However, another commenter argues that anticompetitive collusion is unlikely in CMRS markets because these markets have well-capitalized actual and potential competitors, and demand is increasing. Further, according to this commenter, it is relatively easy for existing competitors to add capacity in response to any price increase, and therefore firms cannot profitably reduce output and sustain a high price for a significant period of time. Other commenters argue that the large number of competitors and the complexities of the various pricing plans make coordination unlikely. Although the record does not indicate that tacit collusion is occurring or is likely to occur, CMRS markets do meet many of the criteria that make tacit collusion sustainable. Moreover, tacit collusion becomes more likely as the number of competitors is reduced.

34. *Conclusion.* In light of all the factors discussed above, the Commission finds that there is meaningful economic competition in CMRS mobile telephony generally. Evidence in MSAs regarding the current state of these markets clearly shows that the presence of multiple competitors is effectively restraining prices, promoting innovation and diversity, and increasing output. Based on the information

available, competition in RSAs appears to be less robust than in MSAs. Finally, to the extent that competitive concerns are raised in a particular proposed assignment or transfer of control application, as discussed below, the Commission believes they can be addressed through means other than the spectrum cap.

C. Repeal and Interim Modification of the Spectrum Cap

35. Currently, the Commission evaluates the competitive effects of the acquisition of CMRS spectrum primarily through the general application of numerical thresholds such as the spectrum cap. The Commission could, however, fulfill its duties under section 310(d) and other statutory provisions through case-by-case review of individual transactions. In light of its finding of meaningful economic competition above, the Commission concludes that long-term retention of the spectrum cap rule is no longer necessary in the public interest, and it therefore moves to repeal that rule. At the same time, it concludes that it is necessary in the public interest to retain the rule for a limited transition period to allow the market to adjust and enable the Commission to consider guidelines for case-by-case review of CMRS spectrum aggregation transactions. Finally, during the transition period, the Commission modifies the rule by increasing the spectrum cap to 55 MHz in all areas.

1. Move From Prophylactic Rule to Case-by-Case Review

36. *Background*. With respect to the appropriate regulatory tool for reviewing potential effects on competition in CMRS markets, proponents of the current spectrum cap generally favor a bright-line approach, arguing that a bright line promotes regulatory certainty and significantly reduces the processing time of transfer and assignment applications. One proponent argues that determining how to apply the rule in a particular case is easier than gathering the information that transacting parties may be required to submit under a case-by-case approach, such as potentially sensitive customer and market share information. Generally, opponents of the current spectrum cap argue that case-by-case review is preferable to a prophylactic approach because the case-by-case approach is more flexible and reduces the possibility of blocking transactions that are actually in the public interest or, alternatively, permitting transactions that are not in the public interest.

37. *Discussion*. The Commission concludes that it is appropriate to move in the very near future from reliance on a prophylactic rule of general application to pure case-by-case review. In assessing the choice of an appropriate tool, the Commission recognizes that different costs and benefits can be associated with bright-line rules and case-by-case review with respect to degree of flexibility, predictability of outcome, likelihood of rejecting beneficial (or approving harmful) transactions, ability to account for the particular attributes of a transaction or market, speed of decision-making, and resource demands on the Commission and carriers.

38. On balance, and in light of the growth of both competition and consumer demand in CMRS markets, the Commission concludes that case-by-case review, accompanied by enforcement of sanctions in cases of misconduct, is now preferable to the spectrum cap rule because it gives the Commission flexibility to reach the appropriate decision in each case, on the basis of the particular circumstances of that case. The development of competition among CMRS carriers since the 1999 biennial review is an important factor underlying this conclusion. The Commission is persuaded that competition is now robust enough in CMRS markets that it is no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest. As discussed below, the Commission commits itself to increasing Commission resources available to review spectrum aggregation transactions and to considering appropriate guidelines for review of future transactions, in order to continue to provide parties with a reasonable degree of certainty and transparency as well as to minimize the administrative costs of case-by-case review.

39. The Commission does not agree with commenters who suggest that the spectrum cap rule should be retained to promote technologically efficient use of spectrum. As discussed above, the Commission's purpose in adopting the spectrum cap was to promote competition in CMRS markets. The Commission is not persuaded that it is in the public interest to interfere with the competitive market's creation of incentives regarding choice of technology. Similarly, the Commission does not agree with commenters who argue that the spectrum cap rule should be retained to further opportunities for resale or roaming arrangements. The Commission's case-by-case review will allow it the flexibility to consider any such concerns raised with respect to specific applications.

40. The Commission also is not persuaded by arguments that the spectrum cap rule should be retained to preserve opportunities for entrepreneurs and providers of niche services. As other commenters point out, the spectrum cap rule does nothing in and of itself to create opportunities for entrepreneurs, and may actually harm small businesses by limiting their access to existing carriers as sources of capital and management expertise. Furthermore, to the extent the spectrum cap does create some potential opportunities for entrepreneurs, the Commission finds this benefit is insufficient to outweigh the benefits of moving away from a bright-line rule approach, particularly in light of the other tools it has to help preserve opportunities for small businesses—its ability to carry out case-by-case review of transactions and its ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. Moreover, the Commission intends to take into account the special needs of small businesses as it considers processing guidelines, and the Commission believes that individualized review will benefit small businesses as well as large.

41. Finally, the Commission notes the arguments of several parties that, if it eliminates or increases the spectrum cap, it should take certain other actions to ensure competition in all segments of the CMRS marketplace. The merits of these proposals are beyond the scope of this proceeding, irrespective of the Commission's decisions today with regard to the spectrum cap; however, the Commission notes that a flexible case-by-case approach will allow it to consider specific circumstances and impacts of individual applications.

2. Case-by-Case Review

42. The public policy objectives that the Commission first articulated in 1994 with respect to review of CMRS spectrum acquisitions remain applicable today. The spectrum cap rule was originally designed to ''discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency.'' The Commission has also stated that the spectrum cap promotes competition in CMRS markets, allows efficient administration of CMRS spectrum acquisitions, and provides regulatory certainty to the marketplace. Although the Commission decides today that the spectrum cap rule is no longer necessary in the public interest, it must still

achieve the objectives that the spectrum cap was intended to promote. The Commission believes that these objectives can now be better achieved in the context of secondary market transactions through case-by-case review, properly performed. Furthermore, to the extent that the initial distribution of spectrum through auction is an issue in the future, that is also amenable to case-by-case review, in the sense that the Commission can shape the initial distribution through the service rules adopted with respect to specific auctions.

43. With or without the spectrum cap rule, the Commission has an obligation to ensure that acquisitions of CMRS spectrum do not have anticompetitive effects that render them contrary to the public interest. Specifically, section 310(d) of the Communications Act requires the Commission not to approve any transfer, assignment, or disposal of a license, or attendant rights unless it finds that the public interest, convenience, and necessity will be served thereby. Moreover, although strong competitive forces are evident in today's CMRS industry, the Commission recognizes the possibility that significant additional consolidation of control over spectrum could have serious anticompetitive effects. Thus, the Commission intends to perform case-by-case review of CMRS spectrum aggregation transactions in order to fulfill its statutory mandates to promote competition, ensure diversity of license holdings, and manage the spectrum in the public interest. 47 U.S.C. 301, 303, 309(j), 310(d). The Commission determines that, in order to ensure that this review is performed in a manner that serves the public interest, it is necessary to retain the spectrum cap rule until January 1, 2003, to enable the Commission and the market to prepare for case-by-case review, including the Commission's consideration of processing and/or substantive guidelines for this process.

44. *Performing Case-by-Case Review*. Although, the Commission determines that long-term retention of the spectrum cap rule is no longer necessary to serve the procompetitive purposes for which it was adopted, it recognizes that application of this prophylactic rule has conferred certain advantages. In particular, the spectrum cap rule has provided parties with guidance regarding what transactions the Commission would likely consider to be in the public interest, enabled parties to structure their transactions to fall within the rule, and provided processing guidance for Commission staff. From August 2000 to August 2001, the Wireless Telecommunications Bureau disposed of assignments and transfers of control involving approximately 1,305 licenses (other than pro forma applications) currently covered by the CMRS spectrum cap. The overwhelming majority of these transfers and assignments were processed within ninety days.

45. If it were to repeal the spectrum cap immediately, without anything further, the Commission would have neither objective guidelines nor a body of precedent to guide the review process. Therefore, the Commission would run the risks both that its review would fail to produce accurate and consistent results, and that, without benefit of either objective standards or directly applicable precedent, applications would not be decided on a timely basis. To perform meaningful and timely review of spectrum aggregation transactions without the spectrum cap, the Commission may need to develop effective guidelines for this process, as well as ensure that sufficient resources are devoted to the task. One commenter emphasized the importance of regulatory certainty and speed of review to enable them to plan efficiently, invest with confidence, and reassure providers of capital. A transition period is necessary so that the Commission can continue to meet these needs.

46. As it develops the contours of its case-by-case regime during the transition period, the Commission will consider what form of guidelines might best balance the virtues of certainty and flexibility in this review process. For example, procedural guidelines could specify timing benchmarks and the types of information that applicants will be expected to provide. It may also be useful to applicants and Commission staff to identify substantive factors and benchmarks that would make the Commission more or less likely to take a closer look at a proposed transaction. For example, some of these factors could track those in the *DOJ/FTC Merger Guidelines*, such as measures of concentration in a market. One commenter argues that, to the extent the Commission develops internal processing guidelines for evaluating wireless transactions, ''it should look to the same criteria used by [DOJ] in its antitrust analysis—the Merger Guidelines, and rely on the kind of information and methodologies utilized by DOJ in conducting its competition analyses.'' The Commission also will consider the most appropriate process for developing potential guidelines, including whether notice and comment procedures are necessary or helpful. The Commission emphasizes, however, that it does not intend to adopt guidelines to reinstate a bright-line rule.

47. *Relationship of Commission's and DOJ's Processes*. With respect to competitive issues, applicants may currently be required to satisfy both the Commission's review process and that of DOJ. (DOJ investigates proposed mergers and acquisitions to determine whether they may substantially affect competition under sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. 1–2) and section 7 of the Clayton Act (15 U.S.C. 18)). In the *NPRM*, the Commission asked whether, and under what circumstances, in its review of transfer/assignment applications it should defer to DOJ's review of competitive issues in a transaction. A number of parties, generally those that favor retaining the spectrum cap, argue that the Commission cannot leave all competitive review of CMRS markets to DOJ. One commenter argues that the Commission bears a special responsibility under the Communications Act for CMRS markets, different from the antitrust authority of DOJ under the antitrust statutes. Unlike DOJ or FTC, the commenter asserts, the Commission is under explicit statutory mandates to promote economic opportunity; avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants; foster rapid deployment of new technologies, products, and services that benefit the public; and promote the efficient use of the spectrum. Further, the commenter argues that the Communications Act obligates the Commission to promote competition, while DOJ is authorized only to stop proposed transactions that would substantially lessen competition. Therefore, the commenter argues, the Commission has an independent role in competitive review and is not duplicating the work of the antitrust agencies by performing competitive analysis.

48. Another commenter argues that the Commission has authority to prevent certain anticompetitive acquisitions that DOJ does not, such as the acquisition of licenses at auction, license swaps, and spectrum leases. Further, the commenter argues that the Commission has an independent responsibility to review competitive effects of transactions because DOJ's review standard does not encompass overall public interest considerations. Another commenter argues that the Commission should continue to analyze the competitive effects of license transfers and assignments because many transactions fall below the reporting

threshold of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR) (15 U.S.C. 18(a)) and, in light of the recent increase in these thresholds, fewer transactions are now reportable than before. Pursuant to 15 U.S.C. 18(a), premerger notification is required if a transaction meets either of two thresholds: (1) one of the parties to the transaction has annual sales or assets of more than $100 million and the other party $10 million, and as a result of the acquisition, the acquiring person will hold voting securities or assets worth in the aggregate more than $50 million; or (2) the total value of the transaction exceeds $200 million. Further, the commenter argues that DOJ has limited resources, resulting in review of only a subset of the transactions reported under HSR and virtually none of the transactions that need not be reported.

49. Some parties that favor eliminating the spectrum cap argue that the Commission's competitive analysis duplicates review by DOJ and, therefore, is unnecessary and creates delay and uncertainty. These parties generally believe that the Commission should review transfers and assignments only pursuant to specific obligations imposed by the Communications Act, e.g., the public interest standard of section 310(d) and for compliance with Commission rules, and that competitive review of CMRS transactions should be performed exclusively by the antitrust agencies. Another commenter argues that DOJ is better equipped than the Commission to investigate competitive harm, but that section 310(d) of the Communications Act provides the means for the Commission also to investigate competitive issues as a supplement to DOJ's responsibilities.

50. *Discussion.* The Commission finds that, under the statutory regime set out by Congress, the Commission has an obligation, distinct from that of DOJ, to consider as part of the Commission's public interest review the anticompetitive effects of acquisitions of CMRS spectrum, including those that occur in the secondary market. The U.S. Court of Appeals for the District of Columbia Circuit has found that the Commission must consider antitrust and competition effects in making its public interest determinations under the Communications Act. *United States* v. *FCC* (652 F.2d 72 (D.C. Cir. 1980)).

51. Further, the Commission's independent statutory obligations in this area are sufficiently different from those of DOJ that it would be difficult for the Commission to fulfill them were it to defer generally to competitive assessments made by DOJ. For example, the Commission's unique spectrum management responsibilities, including those under 47 U.S.C. 151, 301, 303, and 309(j), are affected by the level of competition that exists in CMRS markets. In addition, while the Commission has never chosen to exercise it, the Commission has independent authority under sections 7 and 11 of Clayton Act (15 U.S.C. 18, 21(a)) to disapprove the acquisition of common carriers engaged in wire or radio communications or radio transmissions of energy in any line of commerce in any section of the country where the effects of such an acquisition may substantially lessen competition, or tend to create a monopoly.

52. There are also significant differences between the two agencies' procedural responsibilities. Unlike DOJ, the Commission has an independent statutory obligation to make a public interest determination that is judicially reviewable, on the record, pursuant to the APA, with regard to all applications for transfer or assignment of licenses. By contrast, DOJ does not review all CMRS-related transactions, is permitted to exercise prosecutorial discretion in choosing which cases to pursue, and is not required to state the reasons that underlie its decision to abandon individual cases. Were the Commission to defer all competitive review to DOJ, it would sometimes be compelled to defer to DOJ's silence on particular matters, providing no basis for judicial review.

53. It may, however, be appropriate for the Commission to rely, at least in part, on DOJ's analysis in certain cases where DOJ has fully examined the competitive effects of a particular acquisition and determined its effect on the relevant market(s)—for example, cases where DOJ and the transacting parties have entered into a Consent Decree. The Commission intends during its transition period to case-by-case review to explore appropriate circumstances in which it might either rely on DOJ's conclusions or engage in greater coordination with DOJ with respect to these issues so as to minimize duplication of effort between the agencies, process applications as efficiently as possible, and minimize the burden on applicants for Commission approval of transfers and assignments.

54. *Transition Period.* The Commission concludes that a transition period, pursuant to which a modified spectrum cap will remain in effect until January 1, 2003, is in the public interest so that applicants and the Commission can prepare for case-by-case review of all transactions. In addition to giving the Commission the opportunity to consider guidelines, a transition period will also help carriers prepare for the additional burdens that case-by-case review could impose on their resources. In particular, the Commission believes this preparation may be especially important for small businesses. While the Commission believes that opportunities for small businesses can be fully protected through a case-by-case approach, the Commission recognizes that advancing one's positions in a case-by-case regime could require the preparation of more detailed applications, which could require resources that small businesses may not be immediately prepared to commit. In addition, regulatory certainty and speed of processing are likely to be particularly important to small businesses, which typically are less able to withstand extended or costly administrative processes. This demand for resources would be especially great if the Commission were to change immediately to a case-by-case process without first considering effective standards and procedures. The Commission intends to take the special needs of small businesses into account in considering its guidelines for the review of CMRS spectrum acquisitions.

55. At the same time, the Commission finds that in the interim, continued application of the spectrum cap, modified as discussed below, will not result in significant distortions in the market or delay in the introduction of beneficial services. In fact, in only relatively few instances is any party at the spectrum cap. (In the fifty most populous MSAs, Commission records indicate that in only four instances is a carrier currently at the spectrum cap, and in a survey of eighty sample RSAs the Commission found only seven instances of a party reaching the cap.) The Commission believes increasing the spectrum cap to 55 MHz will provide a meaningful margin to relieve capacity constraints that some carriers may face now or are likely to encounter within the next fourteen months. Thus, the Commission will generally presume that transactions complying with the 55 MHz spectrum cap will not cause undue risk of market concentration. At the same time, while it anticipates that most transactions that are within the cap will not raise competitive concerns, the Commission retains the discretion to review the competitive effects of transactions that are within the spectrum cap if an interested party provides specific evidence that such a transaction will create an undue risk of market concentration, or if the Commission staff independently finds

such evidence. In any instance in which permitting a carrier to exceed 55 MHz would be in the public interest due to capacity constraints or otherwise, the waiver process remains available.

56. The Commission concludes that sunsetting the cap on January 1, 2003, will provide a sufficient period of time for the Commission and industry to prepare for reliance solely on case-by-case review of CMRS spectrum aggregation transactions. Moreover, two blocks of spectrum that will be usable for CMRS are likely to be allocated and assigned within this approximate timeframe or soon thereafter. First, the Commission currently has pending a proceeding in which it has proposed to allocate additional spectrum for the provision of 3G and other advanced services. *3G Notice of Proposed Rulemaking* (66 FR 7483, January 23, 2001), *3G Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (''*M&O*'') (66 FR 47591, September 13, 2001) and (''*FNPRM*'') (66 FR 47618, September 13, 2001), *3G First Report and Order and Memorandum Opinion and Order* (''*First R&O*'') (66 FR 53960, October 25, 2001) and (''*MO&O*'') (66 FR 53973, October 25, 2001). Second, 30 MHz of spectrum being vacated by television Channels 60–69 is scheduled to be auctioned beginning June 19, 2002. Accordingly, the spectrum cap rule will cease to be effective on January 1, 2003. The Commission believes that setting a date certain for repeal of this rule provides stability to the market, and that this period gives all parties sufficient time to prepare for the change.

3. Modification to the Spectrum Cap During the Transition Period

57. Having determined that the CMRS spectrum cap should be eliminated, but that a transition period is necessary before it switches to a pure case-by-case approach to analyzing CMRS assignments and transfers of control, the Commission next considers whether to make changes to the existing rule during the transition period. The Commission concludes that an increase in the spectrum cap to 55 MHz in MSAs is appropriate at this time. This modification will provide carriers in MSAs some additional freedom to acquire spectrum during the transition at relatively minimal competitive risk. The Commission also concludes that because the spectrum cap in RSAs is already at 55 MHz, no modification in RSAs is appropriate during the sunset period.

a. MSAs: 58. The current CMRS spectrum cap restricts parties to attributable interests in 45 MHz of covered spectrum in MSAs. In the *NPRM*, the Commission requested comment on whether this threshold should be modified. The Commission first addresses the efficiency effects of the rule and then addresses the competitive effects.

59. *Efficiency Effects of the Spectrum Cap.* Advocates of raising the spectrum cap generally make two types of efficiency arguments. The first is a long-run argument that the 45 MHz ceiling prevents service providers from achieving minimum efficient scale, *i.e.,* that level of output at which long-run average costs reach a minimum. This means that non-trivial economies of scale are going unrealized. The second argument is that in the short run under the current ceilings, the quantity of service demanded exceeds, or will soon exceed, the quantity that firms can supply efficiently. That is, demand for service is, or will be, such that firms will be forced either not to offer certain services at all, or to distort their input choices in order to satisfy demand. This input distortion, for example, might consist of over-investing in cell-splitting and smart antennas because additional spectrum input cannot be acquired.

60. The Commission agrees that both the short-run and long-run efficiency problems, to the extent they are present, would constitute harms imposed by the current rule, and easing them would be a benefit of raising the CMRS cap. Based on the specific information and data in the record, however, the Commission finds that most providers are not constrained today by the current cap in most markets, and that it is unlikely that total demand for voice and data services will grow so rapidly over the next year or two that capacity constraints will become a serious, across-the-board problem during that time. The Commission also believes that less than 45 MHz is required to achieve minimum efficient scale in the provision of service today.

61. The Commission does agree, however, that it may be the case that some carriers are capacity-constrained in certain urban markets with high population density. And the Commission agrees that it is possible—if not likely—that demand for voice and data services will grow so rapidly over the next fourteen months that the current 45 MHz cap would cause significant efficiency costs. Such costs, of course, while initially imposed on the operators, would eventually be passed on at least in part to consumers of mobile telephony services in the form of higher prices, poorer service, or lack of innovation. An increase in the cap to 55 MHz, where it is now for rural areas, can help to prevent such potential efficiency losses.

62. *Competitive Effects of Relaxing the Spectrum Cap.* There are several reasons that an increase in the cap in MSAs to 55 MHz does not pose undue risk of anticompetitive consequences during the transition period, but that any greater increase would run an unacceptable risk of significantly reducing competition. First, a 10 MHz increase in the cap means that, as with the 45 MHz cap, there must in principle be at least four competitors in each geographic market. While the current cap permits four competitors with equal (45 MHz) spectrum holdings, the 55 MHz cap will permit three firms holding 55 MHz and a fourth holding 15 MHz. Although a firm with 15 MHz may be capacity-constrained in some geographic areas, it will often be able to help discipline its larger competitors. Second, the Commission notes that raising the cap to 55 MHz increases the maximum possible input-based HHI by only 350 points, from 2,500 to 2,850. While not insignificant, this increase appears unlikely to foster unilateral pricing power in the current marketplace. Third, mobile telephony operators typically experience high fixed costs and low marginal costs of production. Low marginal costs mean that producers can potentially achieve high profits by reducing their prices, and therefore can render tacit agreements to charge high prices difficult to sustain.

63. The Commission also notes that, as is the case today, it reserves the right to subject transactions involving significant geographic overlap but resulting in consolidation below the new ceiling to further scrutiny. There may be circumstances under which a transfer or assignment could raise competitive concerns notwithstanding compliance with the spectrum cap, for example, elimination of significant actual competition. The Commission will generally presume that transactions complying with the 55 MHz cap do not cause undue risk of market concentration unless specific evidence to the contrary is presented by either interested parties or through review by Commission staff.

64. Furthermore, any concern about the possible competitive impact of moderately increased concentration is also materially reduced by the possibility of additional allocations of spectrum over the next two years that will greatly increase the amount of spectrum available for CMRS applications. In particular, the Commission's Advanced Wireless Services proceeding is considering

options for substantial new allocations of spectrum for terrestrial, fixed, and mobile services. These options include the 1710–1755 MHz band, which has already been transferred from federal government use, and the 2110–2150, 2160–2165 MHz Emerging Technologies band. Licensing of these bands is likely within the next two years. Clearance of incumbent users in each case is unlikely to be difficult, since they are primarily fixed operators and thus multiple options for relocation are available. Although provision of service on these bands is not imminent, the Commission believes this quantity of spectrum and the relative certainty that it will become available shortly after the end of the transition period should meaningfully discourage anticompetitive behavior during the period.

65. *Balancing of Efficiency and Competitive Effects of the Spectrum Cap*. On balance, the Commission finds that it should increase the CMRS spectrum cap to 55 MHz in MSAs. The potential harm from increasing the cap to 55 MHz appears to be outweighed by the corresponding potential benefits, which include facilitating improved operations, network design, and innovation. The Commission believes any increase of less than 10 MHz might not provide significant relief to firms that may be capacity-constrained, because there may be indivisibilities in the secondary market for spectrum that make acquisition in increments smaller than 10 MHz unlikely. (For example, carriers at 40 MHz may in effect be constrained by the 45 MHz cap because they can acquire, at most, 5 MHz of additional spectrum and such a small block of spectrum may not be available.) Regarding the effect of mergers or acquisitions up to the new cap, the Commission notes that many of these may not be acquisitions of ongoing businesses, but rather of bare licenses or licenses with only certain physical assets. In the 50 largest MSAs, for example, there is an average of roughly 40 MHz of unlaunched spectrum licenses. In the ten largest MSAs, there is an average of roughly 30 MHz. Consolidation of this unused spectrum into an existing business would not reduce actual competition, although it might have an effect on potential competition.

66. If a firm is capacity-constrained even at the 55 MHz limit, it may submit a waiver request. We find that waivers provide a reasonable solution for carriers that may need spectrum above the relaxed spectrum aggregation limit during the period until the rule sunsets. Therefore, to the extent that a carrier can demonstrate that in a particular geographic area the spectrum cap is currently having a significant adverse effect on its ability to provide CMRS, the Commission will consider granting a waiver of the cap for that geographic area. We urge carriers requesting waivers to clearly identify what additional services they would provide if the spectrum cap rule were waived, and why such services cannot be provided without exceeding the cap. In evaluating a waiver request, the Commission will also take into account any potential adverse effects of granting the waiver, such as diminution of competition, as well as the potential benefits from the provision of additional services.

*b. RSAs:*67. CMRS markets in rural areas are significantly different from the markets in urban areas. In particular, RSAs typically have many fewer competitors offering two-way mobile service, and many fewer nationwide service providers, than do MSAs. Indeed, in seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. In the *First Biennial Review Order*, the Commission increased the spectrum cap to 55 MHz in RSAs on the ground that allowing rural cellular and broadband PCS carriers to form partnerships in certain overlapping areas would allow these carriers to achieve economies of scope that might facilitate deployment, while entailing little opportunity cost because the economics of serving rural areas made it unlikely that a large number of independent competitors would emerge in any event. In the *NPRM*, the Commission asked whether, in light of the continued lagging development of competition in rural areas, it should consider further changes to the spectrum aggregation limits in these markets. In particular, the Commission asked commenters to describe any benefits to rural customers that had accrued from the previous increase in the spectrum cap in terms of lower prices, availability of digital services, or otherwise.

68. Some commenters argue that the spectrum cap inhibits competition in rural areas due to the high cost of providing service across large geographic areas, and that the most cost-effective means of bringing broadband PCS and SMR services to rural subscribers is to provide existing rural cellular providers the ability to acquire additional spectrum to offer such services. Another commenter, on the other hand, argues that removal of the spectrum cap in rural markets is likely to reduce competition and increase costs of mobile wireless service in those areas, given the smaller number of competitors in rural areas. Others argue that spectrum in rural areas is currently going unused, and that if the spectrum cap and cellular cross-interest rules are eliminated, the Commission should take other actions to ensure that small rural companies have the ability to obtain spectrum and that consumers in rural areas have access to advanced services.

69. Based on the record before it, the Commission concludes that, given the market conditions prevailing in rural areas during the transition period, 55 MHz remains the appropriate level for the spectrum cap in these areas until the cap is eliminated in favor of case-by-case review. Given the smaller population and demand for service in RSAs, it is highly unlikely that the current spectrum cap is causing any capacity constraint or similar inefficiency. The Commission therefore concludes that during the sunset period it should continue to keep the spectrum cap at 55 MHz in RSAs.

D. Partial Repeal of the Cellular Cross-Interest Rule

70. In the *NPRM*, the Commission sought comment on the possible repeal of the cellular cross-interest rule. Alternatively, it asked whether the rule could be modified so that it would not apply in certain circumstances in which other regulations would provide adequate safeguards. The Commission suggested the possibility of continuing to apply the rule only in markets where there are a limited number of competitors to the existing cellular providers. Accordingly, the Commission sought comment on whether there was a need to maintain any cellular-specific restrictions in more urban areas, where there are generally a larger number of competitive choices for consumers. While noting that cellular providers maintained large market shares in MSAs, the Commission asked whether cellular/cellular combinations remain more anticompetitive than cellular/PCS or PCS/PCS combinations in MSAs. Commenters were asked to provide empirical evidence and/or studies on the relative competitive and buildout status of cellular, SMR, and broadband PCS carriers on a market-by-market as well as comprehensive basis.

71. The majority of commenters who address the issue recommend elimination of the cellular cross-interest rule, particularly in MSAs. Some argue that the rule should be eliminated in its entirety. These commenters argue that the rule is unnecessary, outdated, and inequitable, noting that PCS licensees are not subject to a similar rule.

Moreover, they argue that meaningful competition now exists and the rule is not necessary to prevent harmful consolidation. Another commenter argues that, if the spectrum cap rule is retained, the cellular cross-interest rule should be eliminated in MSAs, though retained in RSAs, because in most MSAs, consumers have numerous choices. One commenter argues that the cross-interest rule remains a valuable competitive safeguard, particularly because there are still cellular markets in rural areas in which no broadband PCS provider has initiated service. Others argue that in the event that the spectrum cap or cellular cross-interest rules are modified or eliminated, the Commission must take other actions to ensure opportunities for small businesses and provision of service to underserved areas.

1. Elimination of Cellular Cross-Interest Restriction in MSAs

72. The Commission concludes that the cellular cross-interest rule is no longer necessary in urban markets, given the presence of numerous competitive choices for consumers in such markets. The Commission therefore repeals the rule in MSAs in order to provide relief from capacity constraints and in recognition of the fact that the cellular incumbents in MSAs no longer enjoy significant first-mover advantages. Unlike the case of the spectrum cap, the Commission finds that no transition period is necessary to eliminate the cellular cross-interest restriction in MSAs.

73. In the *First Biennial Review Order*, the Commission concluded that the cellular cross-interest rule was still necessary, given the strong market position held by the two cellular carriers in virtually all markets. The two cellular carriers held the vast majority of subscribers in all markets and were the only providers of mobile telephony service in many markets. The Commission therefore found that the rule was still needed to prevent these incumbents from merging or having significant cross-ownership interests. The Commission recognized, however, that the cellular carriers' relative market position was diminishing in certain markets as broadband PCS and digital SMR service providers attracted more subscribers and began service in more areas of the country, particularly urban markets. The Commission then noted that it would reassess the need for a separate cellular cross-interest rule as part of its year 2000 biennial review, by which time it expected that the market positions of the two cellular carriers and broadband PCS and digital SMR service providers would have narrowed further.

74. The Commission finds today that cellular carriers no longer possess market power in MSAs, and that the services offered by cellular and broadband PCS providers in these markets are indistinguishable to consumers. In MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers that are offering service in some part of the county. Forty of the fifty most populous MSAs have six nationwide carriers, counting Nextel, with the remaining ten MSAs having five nationwide carriers. The significant drop in HHI calculations based on estimated subscribers in the top twenty-five MSAs from January 1999 to January 2001 is further indication that any market power that cellular carriers may have been able to exercise in the past has diminished in these urban markets. Moreover, the cellular providers' share of mobile telephony nationwide had declined to seventy percent by the end of 2000. In addition, most cellular carriers in MSAs have deployed digital technology extensively throughout their networks, and from a customer's perspective, digital service in the cellular band is virtually identical to digital service in the PCS band.

75. Accordingly, the Commission finds no reason to view the combination of cellular licensees in these markets less favorably than combinations of other CMRS licensees. Moreover, because the Commission finds that combinations of cellular carriers in MSAs are not presumptively anticompetitive today, and because restrictions on such combinations may be contributing to capacity constraints, it would be inappropriate to continue applying this rule on a transitional basis.

2. Retention of Cellular Cross-Interest Restriction in RSAs

76. The Commission concludes, however, based on the record before it, that it would not be appropriate at this time to eliminate the cellular cross-interest rule in rural markets. The Commision therefore retains the rule in RSAs, subject to waiver of the prohibition where it is shown that the proposed cross-interest would not create a significant likelihood of substantial competitive harm. The Commission will, however, reassess the need for a cellular cross-interest restriction in RSAs as part of its next biennial review in 2002, by which time the Commission may have more comprehensive information regarding the state of competition in rural markets.

77. CMRS markets in rural areas are different from the markets in urban areas, in that, generally, the cellular providers seem to enjoy first-mover advantages and to dominate the marketplace. In seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. Indeed, fifty-six percent of RSA counties have two or fewer facilities-based providers of mobile telephony offering service, presumably in most instances the two cellular licensees. In addition, it is the Commission's understanding that, in some areas, any competitors to the cellular incumbents are serving only a small portion of the county, particularly in the western United States, where many states have large rural counties. It is also significant that cellular carriers still control 70 percent of mobile telephony markets nationwide as of year-end 2000, and this share is likely to be smaller in MSAs and larger in RSAs. In the absence of a record to the contrary, these facts suggest that the cellular carriers generally dominate the rural markets. Moreover, due to the economics of serving rural areas, potential entry by new competitors is likely to be difficult. Thus, based on the record in this proceeding, it appears that a combination of interests in cellular licensees in rural areas would more likely result in a significant reduction in competition. In this regard, the Commission notes that unlike the spectrum cap rule, the cellular cross-interest rule addresses not the aggregation of spectrum, but the competitive position of the two cellular licensees. Without more comprehensive information in the record, however, the Commission is unable to conclude that repeal of the cellular cross-interest rule in RSAs is appropriate at this time.

78. In addition, the cellular cross-interest rule in RSAs is well tailored to the harm that it seeks to prevent. Because the rule places cellular carriers in RSAs under no special constraints in obtaining PCS spectrum, and in most RSAs there is ample unused PCS spectrum available, the rule does not prevent cellular carriers from increasing their capacity or offering advanced services. The ability of cellular carriers in rural areas to obtain PCS spectrum may provide an additional opportunity to consumers in RSAs to have access to the same advanced services offered to consumers in MSAs. The Commission therefore concludes that it should continue to forbid a cellular licensee in an RSA from holding an attributable interest in the cellular licensee on the

other channel block in an overlapping CGSA. To the extent that it can be shown that an RSA exhibits market conditions under which a specific cellular cross-interest would not create a significant likelihood of substantial competitive harm, such a situation can be addressed through waiver of the cross-interest prohibition.

79. Further, the Commission rejects one commenter's arguments that the benchmark for attributable ownership interests under the cellular cross-interest rule should be increased from five to 20 percent, as under the spectrum cap rule, and that the Commission should include a provision for waiver in the case of a passive minority investor in a licensee that has a single majority shareholder. The commenter, which supports retention of the spectrum cap and the cellular cross-interest rule (in both MSAs and RSAs), argues that because of the evolution of mobile telephony since the inception of the cellular cross-interest rule, there currently may be situations in which attributable ownership interests of greater than five percent would pose ''no actual threat to competition.'' In the *First Biennial Review Order*, the Commission found that given the continued dominance of the cellular incumbents in CMRS markets, allowing a party with a controlling interest in one cellular licensee to hold up to twenty percent ownership of the other licensee in the same market would pose a substantial threat to competition. Specifically, significant cross-interests between the two largest service providers in RSAs generally would create a significant incentive for the two not to compete with one another as vigorously as otherwise. For the reasons discussed above, the Commission concludes that market conditions in RSAs have not changed sufficiently to generally permit such cross-holdings of cellular interests today. The Commission will, however, entertain requests for waiver in appropriate circumstances. Thus, it declines to make the above-suggested revisions to the cellular cross-interest rule.

80. In the *NPRM*, the Commission sought comment on whether the cellular cross-interest rule should be modified to account for the possible disaggregation of cellular spectrum. For example, it asked whether the cellular cross-interest rule should be replaced by a cellular spectrum cap of 35 MHz so as to permit combination of a 25 MHz cellular license with up to 10 MHz of cellular spectrum on the other channel block in the same geographic area. The Commission did not receive any comment on this issue. In light of the absence of comment to guide it deliberations, and in light of the lack of applications for disaggregation of cellular spectrum, the Commission declines to modify the rule at this time. Given the lack of record evidence regarding this issue, the Commission believes it is more appropriate at this time to address any such requests on a case-by-case basis.

E. Clarification and Streamlining of Divestiture Provisions

81. The current spectrum cap and cellular cross-interest rules impose different time frames for divestiture of interests. The cellular cross-interest rule requires that a divestiture transaction be consummated prior to consummating the transaction that gives rise to the need to divest. The spectrum cap rule, however, considers parties to be in compliance with the divestiture provisions if, prior to consummating the primary transaction, an application is filed to transfer control of or assign any interest that would conflict with the rule. Based on its experience over the past two years, particularly in reviewing applications that combined cellular and PCS divestitures in one transaction, the Commission believes that the required timing of divestiture under these two rules should be harmonized.

82. Rather than tighten the divestiture provision in § 20.6, the Commission concludes that the better approach is to afford parties more leeway in the timing of divestiture transactions by revising § 22.942 of its rules to permit a transaction that causes a conflict with this rule to close as long as an application (or other request for Commission approval) has been filed that, if granted and the transaction is consummated, would remove the conflict. In choosing this more lenient course, however, the Commission notes that there may be circumstances in which a party that must divest an interest to comply with the spectrum cap and/or cellular cross-interest restriction should not be allowed a full 180 days to consummate a divestiture transaction. Divestiture transactions, by definition, occur to relieve potential anti-competitive effects of additional concentration. Therefore, because of specific competitive consequences of individual transactions, the Commission may decide on a case-by-case basis that it would serve the public interest to shorten the consummation and notification period to minimize the amount of time that such overlap occurs.

83. The Commission also takes this opportunity to clarify certain issues with respect to placing licenses (or interests in licenses) into a divestiture trust. As a preliminary matter, the Commission will revise § 22.942 of its rules to state explicitly that divestiture of licenses or interests pursuant to this rule is permitted via divestiture trust. In the *First Biennial Review Order,* the Commission stated that a licensee may divest to a trust if the trust will be of limited duration (six months or less) and the terms of the trust are approved by the Commission prior to the transfer of the assets to the trust. Further, the Commission stated that: (1) The divesting party must not have any interest in or control of the trustee; (2) the trust agreement must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities; and (3) the trustee must have the authority to dispose of the license(s) as he or she sees fit.

84. Based on its experience over the past two years reviewing such trust arrangements, the Commission believes that certain clarifications are appropriate to its policy on divestiture trusts. First, with respect to communications between the trustee and the beneficiary (*i.e.,* the divesting party), the Commission recognizes that the nature of communication required between the trustee and the beneficiary will differ depending on the nature of the trust property. For example, if the trust property is merely equity in a licensee that the beneficiary formerly held, very little communication between the trustee and the beneficiary will be necessary. If, however, the trustee is holding an entire business and managing operations, the beneficiary must have the freedom, and the responsibility, to respond to inquiries from the trustee, but must not be given additional knowledge about the operations of the divested property that could be used to influence the operations that the beneficiary retained in the affected market(s). Second, to enable the Commission to keep track of the progress toward ultimate divestiture, the Commission clarifies that its policy is to require, in individual transactions, trustees to report to the Commission every sixty days on the status of attempts to transfer the trust property to a third party. Third, the Commission clarifies that material revisions to an approved trust agreement that relate to the types of provisions it has identified herein or in the *First Biennial Review Order* require prior Commission approval. Fourth, the Commission clarifies that, in the case of an approved divestiture trust, the trust property will be attributed during the period held in

trust to the trustee, and because of the protections that are required of such trusts, not to the beneficiary.

Final Regulatory Flexibility Analysis

85. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the R&O

86. In the *NPRM* in this proceeding, as part of its biennial regulatory review pursuant to section 11 of the Communications Act, the Commission solicited comment on whether it should retain, modify, or eliminate the CMRS spectrum cap and the cellular cross-interest rule. In asking these questions, the *NPRM* looked at recent competitive changes in CMRS markets, reexamined the public interest objectives that the spectrum aggregation limits were designed to achieve, and asked whether there were alternatives to the existing rules that would avoid any potential public interest costs.

87. This *R&O* concludes that the CMRS spectrum cap is no longer necessary in the public interest as the result of meaningful economic competition in CMRS markets. Accordingly, the Commission provides for the elimination or ''sunset'' of the spectrum cap rule effective January 1, 2003. The Commission will no longer rely on this prophylactic rule in its approach to the aggregation of CMRS spectrum, but instead it will examine spectrum aggregation on a case-by-case basis, along with enforcement of safeguards in cases of misconduct. During the transition period, the Commission will consider substantive and processing guidelines to guide its case-by-case review of transactions that would raise concerns similar to those that the spectrum cap was designed to address. The Commission further decides, on the basis of the current state of competition in CMRS markets, to raise the spectrum cap to 55 MHz in all markets during the transition period. The Commission believes that this change should address certain carriers' concerns about near term capacity constraints in the most constrained urban areas during the period until the rule is eliminated and reliance solely on case-by-case review of CMRS spectrum aggregation is initiated, while not posing an undue risk of anti-competitive consequences during the transition period.

88. The Commission also eliminates the cellular cross-interest rule in MSAs without a transition period, in recognition that the cellular carriers in these areas no longer enjoy significant first-mover advantages. However, based on the current record, the Commission retains the cellular cross-interest rule in RSAs, where it appears that the cellular incumbents continue generally to dominate the market. The Commission will reassess the continued need for the cellular cross-interest rule in RSAs during the 2002 biennial review.

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

89. The Office of Advocacy of the U.S. Small Business Administration (SBA) and the National Telephone Cooperative Association (NTCA) filed comments in response to the IRFA. The SBA asserts that the Commission failed to (1) clearly state its regulatory objectives, (2) describe the impact its proposed rules would have on small businesses, and (3) propose alternatives designed to minimize this impact. The Commission disagrees.

90. First, the deregulatory goal of this biennial regulatory review proceeding is clear. The Communications Act requires the Commission to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. Subsequent to making those determinations, the Commission is directed to ''repeal or modify any regulation it determines to be no longer in the public interest.'' Pursuant to that mandate, the Commission has reviewed whether competitive or other developments in CMRS markets warrant elimination or modification of any Commission regulations. In particular, in this proceeding, the Commission reviewed whether to retain, modify or eliminate two regulations that currently limit the aggregation of broadband CMRS spectrum: (1) the CMRS spectrum cap and (2) the cellular cross-interest rule. The *NPRM* addressed possible modifications to the spectrum cap and cellular cross-interest rules, including, among other things: (1) Increasing the amount of spectrum that a single entity may hold in a given geographic area beyond 45/55 MHz; (2) modifying the spectrum cap's ten percent population overlap threshold and/or attribution rules; (3) eliminating or modifying the rule that limits attributable SMR spectrum to 10 MHz; (4) altering the cellular cross-interest rule's provisions as they relate to disaggregation of spectrum and/or post-licensing divestiture; and (5) modifying the ownership attribution standards under both rules. Finally, the Commission notes that by its nature, the Commission's statutory biennial regulatory review obligation contemplates a somewhat open-ended review of the Commission's rules with an eye toward deregulation.

91. Second, the *NPRM* sufficiently described the impact the Commission's proposed rules would have on small businesses, as required by the RFA. SBA states, ''the Commission should explain whether lifting the spectrum cap would tend to discourage small business new entry or drive existing small businesses from the marketplace.'' Again, the Commission notes that its statutory biennial regulatory review requires it to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. In the *NPRM,* the Commission stated:

> Since [September 1999], there have been international and economic developments that have significantly affected CMRS markets. For example, consolidation within the CMRS industry in an effort to create national service footprints has tended to reduce the number of smaller entities providing broadband CMRS on a purely local level. As part of this 2000 biennial review, we seek to develop a record regarding whether the CMRS spectrum cap and cellular cross-interest rule continue to make regulatory and economic sense in CMRS markets in the current-, mid-, and long-term. In doing so, we generally request comment on whether retention, modification, or elimination of the CMRS spectrum cap and/or cellular cross-interest rule is appropriate with respect to small businesses that are licensees in the cellular, broadband PCS and/or SMR services. We seek comment on whether there continues to be a need for these rules to ensure that new entrants, including small businesses, have access to spectrum licenses both at auction and in the secondary market. We inquire whether these bright-line rules continue to create efficiencies and reduce transaction costs for small business. We consider the impact on small businesses if we were to adopt alternative approaches that rely more heavily on case-by-case review. We also seek specific comment on various aspects of these rules that particularly affect small business, such as the [sic] whether our September 1999 decision to increase attribution standards to 40 percent has benefited small businesses.

92. The above-quoted language demonstrates that the Commission raised and addressed the very issues SBA claims were absent in the *NPRM.* The Commission believes it sufficiently raised questions to obtain comment on these issues. For instance, the

Commission notes that the above language asks whether ''there continues to be a need for these rules to ensure that new entrants, including small businesses, have access to the spectrum licenses both at auction and in the secondary market.'' Accordingly, the *NPRM* met the RFA's requirements.

93. Finally, SBA states that ''the Commission should raise and explore alternative ways to encourage nationwide networks, alleviate spectrum shortages, or safeguard competition, and analyze how these alternatives would affect entities with varied resources.'' As noted in the above-quoted language, the *NPRM* raised a series of issues concerning small entities, affording such entities adequate opportunity to comment on these issues. In addition, as previously noted, biennial regulatory review by its nature contemplates a somewhat open-ended review of the Commission's rules with an eye toward deregulation, as opposed to a more targeted rulemaking. The deregulatory nature of the *NPRM* focuses on whether to retain, modify or eliminate two rules—the CMRS spectrum cap and the cellular cross-interest rule—because they may no longer be necessary in the public interest as a result of meaningful economic competition. Therefore, within the context of its biennial regulatory review, the Commission believes the *NPRM* raised and explored the possible alternatives (*i.e.,* whether to retain, modify or eliminate the two rules). In addition, the *NPRM* sought comment on alternative courses of action if the Commission does eliminate the spectrum cap.

94. NTCA argues that ''[t]he unconditional raising or lifting of the spectrum cap will likely result in further consolidation within the CMRS industry and diminish the opportunities for smaller entities to provide broadband CMRS service.'' Notably, NTCA does not, in its comments on either the body of the *NPRM* or the IRFA, oppose modifying or eliminating either the spectrum cap or the cellular cross-interest rule. Nor does NTCA identify any specific inadequacy in the IRFA. Rather, as an ''alternative to its proposed rule changes,'' NTCA urges the Commission to take several actions unrelated to its spectrum aggregation limits: (1) license spectrum according to smaller geographic service territories, (2) take actions to increase the availability of spectrum to small carriers on the secondary market, and (3) enforce strict construction requirements against CMRS licensees.

95. The alternatives that NTCA advocates are beyond the scope of this proceeding. Specifically, the Commission considers the size of geographic licensing areas in the context of establishing licensing rules for particular bands of spectrum. The Commission is considering in another proceeding potential measures to facilitate the availability of spectrum in secondary markets. *Notice of Proposed Rulemaking* (65 FR 81475, December 26, 2000). Any potential changes in the Commission's construction requirements, or establishment of construction requirements for newly assigned spectrum, are also best considered separately from spectrum aggregation limits. The Commission has considered in this *R&O* alternatives to eliminating the spectrum cap rule, and has adopted measures to minimize the impact of its decision on small entities.

96. No other comments were submitted specifically in response to the IRFA.

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

97. 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 their rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' 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 which: (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. 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. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (ninety-one percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

98. The rule changes adopted in this *R&O* will affect small businesses that currently are or may become licensees in the cellular, broadband PCS and/or SMR services. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

99. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 808 small cellular service carriers that may be affected by the policies adopted in this *R&O*.

100. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity''' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. Subsequently, the Commission defined an additional classification—''very small business''—for blocks C and F for entities that, together with their affiliates, have had average gross revenues of not more than $15 million

for the preceding three calendar years. These regulations defining ''small entity''' in the context of broadband PCS auctions and licensing have been approved by the SBA.

101. The Commission has held six auctions of broadband PCS licenses to date. No small businesses within the SBA-approved definition bid successfully for licenses in the first of these auctions, Auction No. 4, in which the Commission made available licenses in blocks A and B. In Auction No. 5, the initial C block auction, eighty-nine (89) winning bidders qualified as small entities, winning 493 licenses. In the next C block auction, Auction No. 10, seven (7) winning bidders qualified as small entities, winning eighteen (18) licenses. A total of ninety-three (93) small and very small business bidders won approximately forty percent of the 1,479 licenses for blocks D, E, and F in the next broadband PCS auction, Auction No. 11. In Auction No. 22, forty-eight (48) bidders claiming small or very small business status won 277 of the 347 licenses offered. In Auction No. 35, the most recent broadband PCS auction, twenty-nine (29) of the thirty-five (35) winning bidders qualified as small or very small businesses and won 247 licenses. Accordingly, a maximum of 266 small entities have been awarded or placed high bids on licenses in broadband PCS block auctions to date.

102. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. The auction of the 1,020 geographic area licenses for the 900 MHz SMR band began on December 5, 1995, and was completed on April 15, 1996. Sixty (60) winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

103. The lower 230 channels in the 800 MHz SMR band are divided between General Category channels (the upper 150 channels) and the lower 80 channels. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels (plus three (3) 800 MHz licenses for the upper 200 channels from a previous auction) began on August 16, 2000, and was completed on September 1, 2000. At the close of the auction, 1,030 licenses were won by bidders. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 2,800 geographic area licenses for the lower 80 channels of the 800 MHz SMR service began on November 1, 2000, and was completed on December 5, 2000. Nineteen (19) winning bidders for geographic area licenses for the lower 80 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission, therefore, estimates that there are up to 100 geographic area licensees that are small entities in the 800 MHz and 900 MHz SMR bands. In addition, there are 1,144 incumbent site-by-site SMR licensees on the 800 and 900 MHz bands.

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

104. The rules in this *R&O* do not impose any additional reporting, recordkeeping or other compliance measures.

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

105. In this proceeding, the Commission considered whether to retain, modify, or, alternatively, to eliminate the CMRS spectrum cap and cellular cross-interest rules. The Commission also asked whether there were alternatives to these rules that could avoid any potential public interest costs. The Commission has weighed the benefits of such alternative means of reviewing CMRS spectrum aggregation, specifically considering whether to continue using prophylactic rules or to review spectrum aggregation issues on a case-by-case basis.

106. As an alternative to eliminating the spectrum cap rule, the Commission considered continuing to apply a prophylactic approach to the potential anti-competitive effects of CMRS spectrum aggregation. The Commission recognized that different costs and benefits can be associated with bright-line rules and case-by-case review with respect to degree of flexibility, predictability of outcome, likelihood of rejecting beneficial (or approving harmful) transactions, ability to account for the particular attributes of a transaction or market, speed of decision-making, and resource demands on the Commission and carriers. On balance, and in light of the growth of both competition and consumer demand in the CMRS market, the Commission concludes that case-by-case review, accompanied by enforcement of sanctions in cases of misconduct, is now preferable to the spectrum cap rule because it gives the Commission flexibility to reach the appropriate decision in each case, on the basis of the particular circumstances of that case. The Commission is persuaded that competition is now robust enough in CMRS markets that it is no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest.

107. The Commission believes its provision for a transition period prior to January 1, 2003, for eliminating the spectrum cap will minimize the impact of its decision on small businesses. The Commission notes that several commenters argue against eliminating or increasing the spectrum cap on the ground that the cap preserves opportunities for entrepreneurs and providers of niche services. As other commenters point out, however, the spectrum cap rule does nothing in and of itself to create opportunities for entrepreneurs, and may actually harm small businesses by limiting their access to existing carriers as sources of capital and management expertise. To the extent the spectrum cap does create some potential opportunities for entrepreneurs, the Commission finds this benefit is insufficient to outweigh the benefits of moving away from a bright-line rule approach, particularly in light of the other tools the Commission has to help preserve opportunities for small businesses—its ability to carry out case-by-case review of transactions and its ability to shape the initial distribution of licenses through the service rules adopted with respect to specific auctions. Nevertheless, although it believes that opportunities for small businesses can be fully protected through a case-by-case approach, the Commission recognizes that advancing one's positions in a case-by-case regime could require resources that small businesses may not be immediately prepared to commit. Furthermore, regulatory certainty and speed of processing are likely to be particularly important to small businesses, which typically are less able

to withstand extended or costly administrative processes. Therefore, in considering the adoption of guidelines and procedures, the Commission will take account of the needs of small businesses. The Commission fully expects that case-by-case review, properly performed, will offer large and small businesses alike the benefits of flexibility and attention to the specific details of a particular transaction. The Commission also commits itself to vigorous enforcement of safeguards against anti-competitive activity.

108. During the transition period, the Commission raises the spectrum cap to 55 MHz in all geographic areas. The Commission considered and rejected the alternative of leaving the spectrum cap at 45 MHz in MSAs because it determined that a 45 MHz cap may over the next fourteen months impose capacity constraints, and ensuing costs to consumers, on carriers in certain urban markets. The Commission also determined that a moderate increase in the spectrum cap, under current market conditions, does not pose an undue risk of anti-competitive conduct during the transition period. Finally, the Commission notes that it will continue to review the competitive consequences of transactions that are at or below the spectrum cap if specific evidence of competitive concerns is presented either by interested parties or through review by Commission staff.

109. With respect to the cellular cross-interest rule, the Commission determines that the rule is no longer necessary or appropriate in MSAs because the cellular duopoly conditions that prompted the rule's adoption no longer exist. Thus, under current market conditions in MSAs, there is no reason to treat the aggregation of cellular spectrum any differently than other aggregation of CMRS spectrum. In RSAs, by contrast, the record, though limited on this point, indicates that competition to the incumbent cellular licensees is not as developed as in MSAs. Thus, based on the record in this proceeding, it appears that a combination of interests in cellular licensees would more likely result in a significant reduction in competition. The Commission, therefore, retains the cellular cross-interest rule in RSAs, subject to waiver of the rule for those RSAs that are shown to exhibit market conditions under which cellular cross-interests may be permissible without a significant likelihood of substantial competitive harm.

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

Paperwork Reduction Act Analysis

111. This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and does not contain any new or modified information collections subject to Office of Management and Budget Review.

Procedural Matters and Ordering Clauses

112. Pursuant to the authority of sections 1, 4(i), 11, 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), and 309(j), this *R&O* is adopted, and §§ 20.6 and 22.942 of the Commission's Rules, 47 CFR 20.6, 22.942, are amended as set forth in the *R&O,* effective February 13, 2002.

113. 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, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 47 CFR Parts 20 and 22

Communications common carrier.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 20 and 22 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–54, 303, and 332 unless otherwise noted.

2. Section 20.6 is amended by revising paragraphs (a) and (e)(4)(i) and adding a new paragraph (f) to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *Spectrum limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (*see* 47 CFR 20.9) shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.

* * * * *

(e) * * *

* * * * *

(4)(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (*see* § 1.948 of this chapter; *see also* § 24.839 of this chapter (PCS)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit. Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

* * * * *

(f) *Sunset.* This rule section shall cease to be effective January 1, 2003.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

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

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.942 is amended by revising paragraphs (a) and (c) to read as follows:

§ 22.942 Limitations on interests in licensees for both channel blocks in RSAs.

(a) *Controlling Interests.* A licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for one channel block in a CGSA may not have a direct or indirect ownership interest of more than 5 percent in the licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an

individual or entity that actually controls a licensee for the other channel block in an overlapping CGSA, if the overlap is located in whole or in part in a Rural Service Area (RSA), as defined in 47 CFR 22.909.

* * * * *

(c) *Divestiture.* Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

(1) Parties needing to divest controlling or otherwise attributable interests set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting interest (*see* § 1.948 of this chapter) or other request for Commission approval by which, if granted, such parties no longer would have an attributable interest in the conflicting interest. Divestiture may be to an interim trustee if a buyer or acquirer of the interest has not been secured in the required period of time, as long as the buyer or acquirer of the interest has no interest in or control of the trustee, and the trustee may dispose of the interest as it sees fit. Where parties to such applications or requests for Commission approval hold less than controlling (but still attributable) interests, they shall submit a certification that the applicant or acquirer of the interest and all parties to the application or request for Commission approval have come into compliance with the limitations on interests in licensees for both channel blocks set forth in this section.

(2) [Reserved]

* * * * *

[FR Doc. 02–868 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 64

[CC Docket No. 92–105, WT Docket No. 00–110; FCC 01–351]

The Use of N11 Codes and Other Abbreviated Emergency Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this document, takes several steps towards implementation of 911 as the universal emergency assistance number for both wireline and wireless telephones. Specifically, the Commission adopts a maximum period for all carriers, serving areas with a designated public safety answering point (PSAP) or serving areas where a PSAP has not yet been designated, to transition to routing 911 calls to a PSAP, an existing statewide established default point, or an appropriate local emergency authority. The decision also addresses steps the Commission will take to encourage and support States in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public. Finally, the decision clarifies that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services. The action is taken to satisfy the Commission's legislative mandate and to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services.

EFFECTIVE DATE: February 13, 2002, except for § 64.3002, which contains modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for this section. Public comment on the information collections are due March 15, 2002, and comments by the Office of Management and Budget are due May 14, 2002.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Kimmel or David Siehl,202–418–1310, or Cheryl Callahan, 202–418–1806. For further information concerning the information collection contained in this Order, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order in CC Docket No. 92–105, First Report and Order in WT Docket No. 00–110 (Order), and Memorandum Opinion and Order in CC Docket No. 92–105 and WT Docket No. 00–110, FCC No. 01–351 (cited collectively as Order), adopted November 29, 2001, and released December 11, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov*.

Synopsis of the Order

1. The Commission, in the Order, takes further steps to implement the provisions in the Wireless Communications and Public Safety Act of 1999 (911 Act), enacted by Congress to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services and to implement 911 as the universal emergency assistance number. (A summary of the Third Notice of Proposed Rulemaking in CC Docket No. 92–105 may be found at 65 FR 56752, September 19, 2000. The First Notice of Proposed Rulemaking in WT Docket No. 00–110 was summarized at 65 FR 56757, September 19, 2000.)

2. The Commission first adopts a flexible transition approach to implementation of 911 as the emergency assistance number. This approach reflects the different technical and operational measures that carriers need to undertake and provides carriers the flexibility necessary for them to effectuate transition to 911 expeditiously. The Commission notes that the transition period adopted in the Order does not apply to those carriers who currently route 911 calls to PSAPs in their service area.

3. As an initial matter, paragraph 14 of the Order discusses the use of the term ''appropriate authorities'' as used in the 911 Act, and finds it reasonable to interpret this term to include emergency answering points such as county sheriff offices, volunteer fire departments, or other similar points that are effectively functioning as PSAPs for purposes of receiving emergency calls, and, if necessary, relaying the calls to other emergency service providers, for the purpose of responding to emergencies.

4. As discussed in paragraphs 15 through 31 of the full text of the Order, the Commission establishes a flexible transition approach to 911 implementation. First, where carriers do not currently route 911 calls to officially designated PSAPs, the Commission

adopts a nine-month transition period for each of the particular circumstances carriers will face. Where a PSAP has been designated, the Commission adopts a maximum period, running from the release of this Order and expiring nine months later, for carriers to deliver all 911 calls to that PSAP. Similarly, in areas where no PSAP has been designated, the Commission adopts a requirement that within nine months of the release of this Order, carriers must begin delivering 911 calls: (a) statewide-established default point; (b) if none exists, to an appropriate local emergency authority, such as the police or county sheriff, selected by an authorized State or local entity; or (c) as a matter of last resort and to avoid the blocking of 911 calls, if no PSAP has been designated and neither a statewide default answering point nor an appropriate local emergency authority has been selected, to an appropriate local emergency authority, based on the exercise of the carrier's reasonable judgment, following initiation of contact with the State Governor's designated entity under section 3(b) of the 911 Act.

5. In this regard, the Commission strongly encourages State and local authorities to designate the appropriate emergency response points. The Commission believes that these government agencies, as the primary safety and security agencies should decide the routing of 911 calls. For these reasons, once a carrier has been made aware that no appropriate local emergency authority has been selected, the carrier should notify the Governor's designated entity as soon as practicable of that matter and allow at least 15 days for a response from that entity before proceeding to select an answering point on its own initiative.

6. Further, as discussed in paragraphs 16, 33, and 34 of the Order, in transitioning to the use of 911, carriers must implement a permissive dialing period, during which emergency calls will be routed to the appropriate emergency response point using either 911 or the seven or ten-digit number to allow time for the education of consumers as to the transition to the use of 911. The Commission requires carriers to continue to deliver both 911 calls and emergency calls made using a seven or ten-digit number under a permissive dialing scheme until the State or local jurisdiction determines to phase out the use of the seven or ten-digit number entirely. Once a determination has been made to end a permissive dialing period, as described in paragraphs 16 and 37 of the Order, the Commission requires carriers to furnish a standard intercept message, in accordance with accepted industry practices and guidelines to further educate callers about the dialing code change.

7. Additionally, as indicated in paragraphs 42 through 45 of the Order, the Commission adopts a limited transition report requirement. Specifically, the Commission requires carriers to file two transition reports covering the following geographic areas: (1) Those counties where there is no 911 service; (2) those counties in the process of implementing 911; and (3) those counties that have basic 911 service only in some parts. The first transition report must be filed three months following the release of the Order. The second transition report must be filed 15 calendar days following the end of the transition. Carrier transition reports must be filed, as appropriate depending upon whether the carrier's service is wireline or wireless, with the Chief of the Common Carrier Bureau or the Chief of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The Commission encourages carriers to file their transition reports electronically to the appropriate electronic mailbox that has been established by each Bureau. For ease of accessibility, a link to these reports will be placed on the Commission's E911 website. Depending upon whether the carrier's service is wireline or wireless, please email the report to either *911transitionreport-ccb@fcc.gov* or *911transitionreport-wtb@fcc.gov*. In addition to the information included in the reports as described in paragraphs 44 and 45 of the Order, the Commission delegates authority to the Chiefs of the Common Carrier Bureau and the Wireless Telecommunications Bureau to require additional information, as necessary to evaluate the carriers' progress in achieving the transition and their compliance with the transition requirements adopted in the Order.

8. Paragraphs 46 through 52 of the Order address steps the Commission will take to encourage and support States in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public. The Commission assumes a leadership role to encourage and support States' efforts to deploy comprehensive emergency communications networks by pursuing an informal approach rather than the adoption of specific rules. To carry out its role, the Commission will maintain an ongoing dialog with State and local officials, through interactions with various associated groups such as the National Governors' Association, the National Conference of State Legislatures, and the National Association of Regulatory Utility Commissioners. The Commission also will make presentations on 911-related issues at conferences of various associations, hold roundtable discussions, and provide an information clearinghouse function with links from its E911 website. The Commission will also explore participation in the National Emergency Number Association's (NENA) ''critical issues forums,'' providing a website link for NENA's Report Card to the Nation and updates to that report and assisting in the establishment of State-level clearinghouses.

9. Finally, paragraphs 55 through 62 of the Order clarify that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis

10. This Order contains a modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 15, 2002, and comments from the Office of Management and Budget are due May 14, 2002. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested OMB emergency approval of these modified burdens and will place a document in the **Federal Register** once this approval is received.

OMB Control Number: 3060–0954.

Title: Implementation of the 911 Act, The Use of N11 Codes and Other Abbreviated Dialing Arrangements.

Form No. N.A.

Type of Review: Revision of an existing information collection.

Respondents: Business or other for profit; not for profit institutions, State or local government.

Number of Respondents: 800 respondents, 400 responses.

Estimated Time Per Response: 4.5 hours.

Frequency of Response: Third-party Disclosure, on occasion; Reporting, twice.

Total Annual Burden: 3,100 hours.

Cost to Respondents: 0.

Needs and Uses: The burdens contained in this Order are all needed to ensure prompt and smooth transition to universal 911 emergency calling services.

Final Regulatory Flexibility Act Analysis

11. This is a summary of the Commission's Final Regulatory Flexibility Analysis. The full text of the Analysis may be found in Appendix C of the Order.

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the Notice of Proposed Rulemaking (NPRM) and the Third NPRM (Third NPRM) in this proceeding. The Commission sought written public comment on the proposals in the NPRM and the Third NPRM, including comment on both IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of the Memorandum Opinion and Order on Reconsideration and Fifth Report and Order

13. In this and Fifth Report and Order (Fifth R&O) in CC Docket No. 92–105, First Report and Order (First R&O) in WT Docket No. 00–110, and Memorandum Opinion and Order on Reconsideration in both dockets (collectively referred to as the Order) the Commission takes further steps to implement the provisions in the Wireless Communications and Public Safety Act of 1999 (911 Act) enacted to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. The actions adopted in the Order are intended to ensure that these Congressional goals are implemented effectively and efficiently.

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

14. No comments were filed in direct response to the IRFAs. However, the Commission received comments regarding several issues affecting small entities. For example, as discussed in paragraphs 4 through 9 of the Order, commenters questioned whether the Commission is the appropriate entity to establish transition periods for implementation of universal 911 dialing. The Commission disagrees, finding that to delegate the responsibility to States and localities for establishing transition periods for carriers could result in multiple, conflicting transition periods. Also, as indicated in paragraphs 42 through 45 of the Order, commenters opposed a requirement that carriers file transition reports for Commission use as a tool to monitor carrier progress in converting to universal 911. However, the Commission adopts a limited transition report requirement which is less burdensome than that proposed in the Third NPRM. As adopted, carriers are required to file only two reports and these reports will focus only on carriers serving those areas of country in which 911 is not currently in use. This requirement is discussed in more depth in the FRFA section, *infra,* considering steps taken to minimize the significant economic impact on small entities and alternatives considered.

15. Paragraphs 48 through 52 of the Order discusses ways in which the Commission can comply with its obligation to offer support of comprehensive state emergency plans. Although the Commission received only nine comments on this issue, one comment, for American Samoa License, Inc., in particular, provided significant input on, among other things, the unique circumstances of its situation and the way a ''one-size-fits-all'' model plan would not address its particular needs. In response to such comment, the Commission adopts an informal leadership approach to its responsibilities in this regard, for example, by participating in organizational meetings setup by interested parties, and placing details of information-sharing measures by means of the FCC's website and public notice, which the Commission hopes will encourage increased participation to which we can add our support.

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

16. 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 adopted in this action. 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. 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'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with populations 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.

18. This list includes categories that at present may not be subject to the 911 Act rules. At present, covered carriers include all cellular licensees, broadband PCS licensees, and certain carriers of Specialized Mobile Radio (SMR) licensees. The SMR providers that are presently covered include ''only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.'' For those carriers that presently do not need to comply with the 911 requirements, such

as Mobile Satellite Service (MSS) carriers, the Commission acknowledges that, at some point in the future, they may be required to provide appropriate access to emergency services.

19. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for ''Cellular and Other Wireless Telecommunications'' and ''Wired Telecommunications Carriers.'' According to these standards, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the effected services fit into the SBA definition of small business, the Commission has consistently referred to Table 5.3 in *Trends in Telephone Service (Trends)* a report published annually by the Commission's Common Carrier Bureau.

20. *Local Exchange Carriers.* According to the most recent *Trends* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, or are not independently owned. However *Trends* indicates that 1,037 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS.

21. We have included small incumbent local exchange carriers in this RFA analysis. 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.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

22. Also included in the number of Local Exchange Carriers is the rural radio telephone service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the NAICS definition.

23. *Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends* indicates that 349 CAPs and CLECs, 87 local resellers, and 60 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, *Trends* states that 297 CAPs and CLECs, 86 local resellers, and 56 other local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees for a total of 439 such entities qualified as small entities.

24. *Fixed Local Service Providers and Payphone Providers. Trends* reports that there are 1,831 fixed local service providers and 758 payphone providers. Using the NAICS standard for small entity of fewer than 1,500 employees, *Trends* estimates that 1,476 fixed local service providers, in combination with affiliates have 1,500 or few employees and thus qualify as small entities. In addition, 755 payphone providers report that, in combination with their affiliates, they employ 1,500 or fewer individuals.

25. *Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers.* There are 806 entities in this category as estimated in *Trends,* and 323 such licensees in combination with their affiliates have 1,500 or fewer employees and thus qualify using the NAICS guide, as small businesses.

26. *Other Mobile Service Providers. Trends* estimates that there are 44 providers of other mobile services, and again using the NAICS standard, 43 providers of other mobile services in combination with their affiliates hire 1,500 or fewer employees and thus may be considered small entities.

27. *Toll Service Providers. Trends* calculates that there are 738 toll service providers, including 204 interexchange carriers, 21 operator service providers, 21 pre-paid calling card providers, 21 satellite service carriers, 454 toll resellers, and 17 carriers providing other toll services. *Trends* further estimates that 656 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS. This figure includes 163 interexchange carriers, 20 operator service providers, 20 pre-paid calling card providers, 16 satellite service carriers, 423 toll resellers, and 15 carriers providing other toll services.

28. *Offshore Radiotelephone Service.* This service operates on several TV broadcast channels that are not otherwise used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Commission adopts a flexible approach of basic requirements based on maximum periods for certain technical and operational aspects of a transition and recommends steps to ensure the prompt delivery of emergency calls across the nation. Paragraphs 18 through 21 of the Order consider transition periods for areas where there is a designated public safety answering point (PSAP) or once a PSAP is designated. For areas in which State or local authorities have established a PSAP, the Commission adopts a maximum nine-month transition period that runs from December 11, 2001, for carriers to deliver all 911 calls to that PSAP. Subsequent to the transition period, the Commission establishes a permissive dialing period in order for carriers to educate consumers on the transition to 911-dialing. The Commission also encourages such carriers, following the permissive dialing period, to furnish a standard intercept message. (*See* paragraphs 16 and 37 of the Order).

30. Also, as detailed in paragraphs 22 through 31 of the Order, in areas where there is no PSAP, the Commission adopts the following requirements: within nine months of the effective date of this Order, carriers must begin delivering 911 calls to either a statewide established default point or, if none exists, to an appropriate local emergency authority, such as the police or country sheriff. If a State or local authority prefers that carriers deliver 911 calls to some other local default point, the Commission provides that carriers must begin delivering 911 calls to such a default point no later than nine months from the date of the request by the local authority or appropriate State entity. Once a State or local authority has formally designated a PSAP for an area, a carrier will have a nine-month period to deliver 911 calls

to that PSAP. Paragraph 27 of the Order establishes that, where no appropriate local emergency authority has been selected, that carriers contact, as soon as practicable, the entity designated by that State's Governor to assist in implementation of 911, and to allow 15 days for a response. If none is forthcoming, then carriers should exercise reasonable judgment in determining where to deliver 911 calls.

31. Paragraphs 42 through 45 of the Order consider implementation and enforcement of transition period deadlines. In this regard, the Commission adopts a limited transition report requirement which requires that carriers serving areas where 911 is not in use as the emergency number on the date of enactment of the law file two reports as detailed in paragraphs 43–45 of the Fifth R&O.

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

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include, among others, 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

33. The Commission is limited in establishing less stringent requirements for small entities in this proceeding by the critical public safety issues of concern and by legislative mandate. The results of delayed or insufficient response to wireless 911 calls can be equally fatal whether the carrier involved is a large or small entity. When given alternatives which do not compromise the public safety goals of this proceeding but offer all entities the flexibility to carry out their responsibilities in a way that is tailored to their individual locality and its needs, the Commission has chosen the more flexible option. For example, in areas where there is neither a PSAP nor a statewide default answering point, many of which are served by small carriers or are governed by small entities, an existing local law enforcement agency such as a country sheriff could serve as the local emergency authority.

34. On the other hand, several carrier-commenters recommend that the Commission allow carriers and States and localities to establish transition periods for implementation of 911 dialing. As discussed in paragraphs 5 through 9 of the Fifth R&O, the Commission declines to adopt this alternative, finding that to delegate such authority to carriers and PSAPs could result in multiple, conflicting transition periods and create confusion in critical emergency situations as travelers move from one locality to another. Further, the Commission finds that delegating the authority to establish 911 transition periods to carriers and PSAPS could hinder the Commission's ability to ensure that the transition to 911 dialing occurs on a timely basis and could hinder the Commission's overall ability to monitor the transition to 911 as the nationwide emergency number. If the Commission had authorized States and localities to establish 911 transition periods, it would place the responsibility and burden for this administrative work on the entities themselves, many of whom are small. It should be noted, however, that the Commission recognized the need for a transition period, noting the fluid nature of technology, and provided the flexible transition period adopted in the Fifth R&O. The transition period will allow both large and small carriers time, not only to complete the technological updates and coordination which may be necessary to provide 911 service, but also time to educate the public regarding 911 service. Also, in establishing flexible transition periods, the Commission recognizes that individual service areas face different technical and operational measures.

35. In this regard, as discussed in paragraphs 32 through 39 of the Order, the Commission elects not to promulgate rules for carriers to educate the public about 911 transition, but simply encourages carriers to plan and provide time in the transition period for planning and executing a public education program. Several commenters suggest additional requirements regarding educating the public, which the Commission found to be unnecessary and burdensome, particularly on small entities. One commenter, for example, proposed a requirement that carriers service areas that currently use non-911 abbreviated numbers for emergency purposes notify the agency using such numbers that they will not be available after the transition period. The same commenter recommended requirements for carriers to provide billing inserts apprising customers of the conversion to 911 as the universal emergency assistance number. The Commission encourages such public education efforts to enable the permissive dialing period to be discontinued. Nonetheless, once discontinued, the Rules require the carriers to intercept calls made via non-911 emergency numbers with an announcement to alert the caller to the change to 911 for emergency calls. This offers all carriers, including small carriers, the flexibility to design the appropriate public education program that best satisfies the need for 911 education within the individual service area, while offering the carrier some control over expenditures in this area.

36. In one area, however, the Commission, faced with its legislative mandate to monitor the progress of carriers in the transition to 911, adopted a requirement that may particularly impact rural and small carriers. As indicated in paragraphs 42 through 45 of the Order, the Commission adopts a limited requirement for transition reports. In the NPRM, the Commission proposed a broader approach to transition reports that would have affected all carriers and would be filed on a more regular basis than the requirement adopted in the Fifth R&O. The adopted requirement states that only those carriers providing service in areas where 911 is not in use as the emergency number on the date of enactment of the law must file two reports. The filing of the reports will be limited to those counties where there is no 911 service; those counties that are in the process of implementing 911; and those counties that have basic 911 service only in some parts. The first report is to be filed March 11, 2002 and the second report 15 calendar days after the end of the transition period. Although the actual regulation is less burdensome overall on all carriers, it is likely that carriers that do not yet offer 911 service would be small entities as defined by the SBA. In addition, as described in paragraph 27 of the Order, the Commission adopts a requirement that carriers serving areas where no PSAP or appropriate local emergency authority has been established must initiate contact with the entity designated by the Governor before exercising reasonable judgment as to where to deliver 911 calls.

37. The Commission recognizes that the burden for making progress towards 911 implementation may fall, during the transition period, on small and rural entities because they are most likely to require the most effort in implementing 911. They may cover larger, less populated areas who may face funding

problems and who may have farther to go in achieving the expensive technological advances which facilities serving more urban areas have access to. By the same token, however, these same disadvantages that many such small carriers and State or local governments face also dictate a need for optimum 911 emergency service as quickly as possible. The Commission has tried to make compliance with 911 rules and implementation dates as fair as possible to small entities by, for example, establishing flexible transition periods. In establishing the limited transition report requirement, the Commission provides that carriers might, at their option, consolidate reporting and eliminate redundant reports by filing the transition reports either collectively with those carriers similarly situated or combining reports for several counties facing similar problems, thus saving the affected carriers time and costs. It is intended that the transition reports will provide the Commission with information leading to solutions to the unique problems faced by small entities in the implementation of 911 service. In addition, the Commission hopes the reporting process will generate a cooperative dialogue regarding how entities with similar problems can resolve such issues.

38. The Commission, instead of establishing a proposed program that would require carriers and PSAPS, large and small, to provide information to each other or to the Commission regarding problems exclusive to their locality, establishes an informal program in which the Commission would serve as a clearinghouse for such information. Further, instead of establishing a coordination requirement forcing PSAPs and carriers to meet to discuss intra-locality issues, the Commission emphasizes the importance of assuming a leadership role in providing coordination and technical assistance and endorses the joint leadership of the Commission and State Governors in this area to assist parties involved with integrated comprehensive emergency communications systems. (*See* paragraphs 46 through 52 of the Order)

39. *Report to Congress:* The Commission will send a copy of this decision, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(a). In addition, the Commission will send a copy of the Order, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

40. Pursuant to §§ 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310, the Fifth Report and Order in CC Docket No. 92–105 is adopted.

41. Part 64, new Subpart AA, of the Commission's rules is adopted to require wireline and wireless licensees to complete the transition to 911 as the universal emergency assistance number, as set forth in Appendix B of the Order and will become effective February 13, 2002, except for § 64.3002, which contains modified information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a notice in the **Federal Register** announcing the effective date for this section.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this, Fifth Report and Order, First Report and Order, and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. Pursuant to §§ 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310, the First Report and Order in WT Docket No. 00–110 is adopted.

44. The Petition for Reconsideration or Clarification of the Fourth Report and Order, in CC Docket No. 92–105, filed by Maritel, Inc. on September 28, 2000, IS GRANTED to the extent described in the Order.

45. Authority is hereby delegated to the Chiefs of the Common Carrier Bureau and the Wireless Telecommunications Bureau to require additional information, as necessary, to evaluate carriers progress in achieving the transition to the use of 911 and their compliance with the transition requirements set forth in the Order.

List of Subjects

47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

47 CFR Part 64

Communications common carrier, Radio, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications amends 47 CFR Parts 20 and 64 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.3 is amended by adding definitions of ''appropriate local emergency authority'' and ''statewide default answering point'' in alphabetical order to read as follows:

§ 20.3 Definitions.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited, to an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

* * * * *

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

3. Section 20.18(b) is revised to read as follows:

§ 20.18 911 Service.

* * * * *

(b) *Basic 911 Service.* Licensees subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 64.3001 of this chapter, provided that ''all wireless 911 calls'' is defined as ''any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier.''

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

5. Add subpart AA to part 64 to read as follows:

Subpart AA—Universal Emergency Telephone Number

Sec.
Sec. 64.3000. Definitions.
Sec. 64.3001. Obligation to transmit 911 calls.
Sec. 64.3002. Transition to 911 as the universal emergency telephone number.
Sec. 64.3003 Obligation for providing a permissive dialing period.
Sec. 64.3004 Obligation for providing an intercept message.

Subpart AA—Universal Emergency Telephone Number

Authority: 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310.

§ 64.3000 Definitions.

(a) *911 calls.* Any call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider. For wireless carriers, all 911 calls include those they are required to transmit pursuant to § 20.18 of the Commission's rules.

(b) *Appropriate local emergency authority.* An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

(c) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive 911 calls and route them to emergency services personnel.

(d) *Statewide default answering point.* An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

§ 64.3001 Obligation to transmit 911 calls.

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 64.3002.

§ 64.3002 Transition to 911 as the universal emergency telephone number.

As of December 11, 2001, except where 911 is already established as the exclusive emergency number to reach a PSAP within a given jurisdiction, telecommunications carriers shall comply with the following transition periods:

(a) Where a PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to a PSAP no later than September 11, 2002.

(b) Where no PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to the statewide default answering point no later than September 11, 2002.

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 64.3003 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven-or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction determines to phase out the use of such seven-or ten-digit number entirely and use 911 exclusively.

§ 64.3004 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 64.3003, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven-or ten-digit emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

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BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–132; FCC 01–314]

1998 Biennial Review—Multichannel Video and Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a number of minor corrections to various part 76 rules pertaining to the public file, notice, recordkeeping, and reporting requirements which were published in the **Federal Register** of Tuesday, September 5, 2000 (65 FR 53610). This action completes the Commission's 1998 biennial review of the public file and notice requirements concerning cable television.

DATES: Effective February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Sonia Greenaway-Mickle, Cable Services Bureau, (202) 418–1419.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (''Second Order''), FCC 01–314, adopted October 22, 2001; released October 31, 2001. The full text of the Commission's Order is available for inspection and copying during

normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/*.

In this document we make non-substantive rule changes to correct errors in the publication of part 76 of the Commission's rules. With this action, we complete the Commission's biennial review of the public file, notice, recordkeeping, and notice requirements applicable to cable operators under part 76 of the Commission's rules.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 76

Multichannel video and cable television service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Accordingly, 47 CFR part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1.The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

§ 76.305 [Removed]

2. Remove § 76.305.

3. Add Note to § 76.309 to read as follows:

§ 76.309 Customer service obligations.

* * * * *

Note to § 76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

4. Add Note 4 to § 76.630 to read as follows:

§ 76.630 Compatibility with consumer electronic equipment.

* * * * *

Note 4 to § 76.630: Cable operators must comply with the notification requirements pertaining to the waiver of the prohibition against scrambling and encryption, and comply with the public file requirement in connection with such waiver.

5. Section 76.1510 is revised to read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

§ 76.1700 [Amended]

6. Section 76.1700 is amended by removing and reserving paragraph (a)(1).

§ 76.1702 [Amended]

7. Section 76.1702 is amended the first time it appears by removing the editorial note. Section 76.1702 is further amended by removing it the second time it appears in its entirety.

§ 76.1802 [Amended]

8. Section 76.1802 is amended the first time it appears by removing the editorial note. Section 76.1802 is further amended by removing it the second time it appears in its entirety.

[FR Doc. 02–788 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 195

[Docket No. RSPA–99–6355; Amendment 195–74]

RIN 2137–AD61

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Repair Criteria)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule finalizes repair provisions for hazardous liquid pipelines. These provisions were initially proposed in the previous rulemaking action which addressed requirements for pipeline integrity management programs in high consequence areas for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline (Integrity Management rule.) In the Integrity Management rule, we requested comment on the repair and mitigation provisions, because the provisions were substantially modified from those originally proposed in the notice of proposed rulemaking. This final rule also makes several non-substantive corrections and clarifications to other provisions of the Integrity Management rule.

DATES: This rule is effective May 29, 2001, except for paragraph (h) of § 195.452 which takes effect February 13, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or by e-mail: *mike.israni@rspa.dot.gov*, regarding the remediation provisions in paragraph (h) or any other provisions of the integrity management rule; or the Dockets Facility (202) 366–9329, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov*. General information about the RSPA/Office of Pipeline Safety (OPS) programs may be obtained by accessing OPS's Internet homepage at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2000, RSPA published a final rule (65 FR 75378) that prescribed integrity management

program requirements for pipeline operators who own or operate 500 or more miles of pipeline transporting hazardous liquids or carbon dioxide. Under the Integrity Management rule, operators are required to develop and implement integrity management programs that focus on hazardous liquid and carbon dioxide pipelines that could affect high consequence areas. High consequence areas are defined as: populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways.

As part of the Integrity Management final rule, we requested comment on repair and mitigation provisions (§ 195.452(h).) We made this request because we substantially changed the initial provisions proposed in the notice of proposed rulemaking. We noted at that time that, at the end of the comment period (March 31, 2001), we would either publish a final rule modifying these repair provisions or stating that the provisions would remain unchanged. We received comments from six sources. Based on our analysis of the comments received, we modified paragraph (h). We discussed the comments, our responses, and changes made to these provisions below, in greater detail.

This document also makes several corrections and language clarifications to other provisions in § 195.452 and the Appendix C guidance. These changes do not affect the substance of any of the Integrity Management rule requirements. Rather, these revisions either correct the rule because of mistakes found since the rule was issued, or they clarify some of the language.

Corrections

The reference in paragraph (j)(4)(i) that the external monitoring technology provide an understanding of the line pipe equivalent to that obtained under paragraph (j)(2), was incorrect. The reference should be to the assessment methods listed in paragraph (j)(5), not to the evaluation described in paragraph (j)(2).

We deleted the sentence in paragraph (j)(4)(ii) requiring an operator to complete an integrity assessment within 180 days, after providing 180-days advance notice that it could not complete the five-year continual integrity assessment because of unavailable technology. If we did not remove this requirement, an operator would have to complete the re-assessment within the five-year period. Thus, the exception for a longer assessment period would be illusory.

We corrected the notification period in paragraph (j)(5)(iii), which required using alternative technology in the continual integrity assessment, from 60 days to 90 days. 90 days is consistent with the advance notice required for a baseline assessment that uses technology other than a hydrostatic test or an internal inspection tool.

We added paragraph number 1 to precede the first sentence in paragraph (l).

We corrected the grammar in several places in Appendix C.

Clarifications and Non-Substantive Revisions

We added carbon dioxide pipelines to § 195.452(a) to clarify that the integrity management program requirements for hazardous liquid pipelines to also apply to carbon dioxide pipelines regulated under Part 195.

We clarified in paragraphs (c)(1)(i) and (j)(5) that the three allowable assessment methods for the baseline and continual integrity assessments are to be applied to lap welded pipe and to low frequency ERW pipe.

We clarified that the periodic evaluation (paragraph (j)(2)) is to consider the results from the integrity assessments required by § 195.452, i.e., the baseline and continual integrity assessments.

We clarified the language in paragraph (j)(4)(i) regarding the justification and notice required for a variance based on engineering reasons.

We added the requirement that an address and facsimile number must be included for notifications required by the Integrity Management rule, rather than referencing these in other pipeline safety regulations. Due to the confusion of some operators about where to send a notification required by § 195.452 versus notifications required for other purposes, we added a new paragraph (paragraph (m)), which provides this information.

We revised several paragraphs in § 195.452 and Appendix C to make the terminology consistent with changes made to the terms used in paragraph (h).

We added another section to the guidance in Appendix C, which lists conditions an operator should include in its schedule for evaluation and remediation.

Advisory Committee Consideration

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) is the Federal advisory committee charged with the responsibility of advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed hazardous liquid pipeline safety standards. The committee is composed of members with the requisite statutory expertise who represent industry, government, and the general public.

We discussed the repair provisions in paragraph (h) and comments received on those provisions by teleconference with the THLPSSC at its meeting on August 13, 2001. Before the discussion, the committee members were mailed a summary of comments on the repair provisions, and a supplement to the cost-benefit analysis that addressed these provisions.

At the August 13 meeting, seven of the twelve current members participated in the teleconference. These seven THLPSSC members voted unanimously to accept the repair provisions, provided OPS consider the changes and comments discussed during the teleconference.

The following is a list of the changes and comments that the THLPSSC asked OPS to consider:

- Reevaluate and relax the 60-day repair schedule for dents on the top of the pipe.
- Allow mitigative measures, other than repair.
- The provisions assume the use of in-line-inspection technology to identify defects although the rule allows both hydrostatic testing and other technologies for the integrity assessments.
- Provide that discovery of a defect occurs when an engineering analysis of the assessment results is completed.
- Let the section reflect that some internal inspection assessment results cannot be analyzed as quickly as others. For example, it typically takes a year following completion of the assessment to receive final results from a crack detection tool.
- Delete the section on other conditions requiring repair or move it to Appendix C as guidance material.

We discuss below all changes made to § 195.452(h) in response to the THLPSSC and other commenters.

Comments on Section 195.452(h)

On December 1, 2000, OPS issued a final rule addressing pipeline integrity management in high consequence areas for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline (65 FR 75378) (The Integrity Management Rule.) This rule included provisions addressing the repair of conditions found during an integrity assessment. The provisions were found in paragraph (h) of section 195.452, under the title ''What actions must be taken to address integrity

issues.'' However, because the repair provisions in the Integrity Management rule were substantially different from what we initially proposed in the notice of proposed rulemaking, we requested comment on the provisions. All other provisions of the Integrity Management rule were final and became effective May 29, 2001.

We received comments from the following six sources:

—One trade association with members affected by this rulemaking:
American Petroleum Association (API)
—Three individual liquid pipeline operators:
Tosco Corporation
Chevron Pipe Line Company
Colonial Pipeline Company
—One operator not directly affected by this rulemaking:
Enron Transportation Services Company (natural gas transmission)
—One Engineering company:
SEFBO Pipeline Bridge, Inc.

SEFBO did not comment directly on the repair provisions but expressed its support for pipeline integrity management programs and stressed the importance of considering safety issues relating to the support structures used by pipelines to cross high consequence and other sensitive areas.

Some of the comments we received about the repair provisions also addressed other portions of the final rule. As we only requested comment on the repair provisions in paragraph (h), this document will focus on those comments. If at some point we determine that substantive revisions to the final rule are necessary and we propose changes, we will then consider those comments.

Comments on Section 195.452(h)—''What actions must be taken to address integrity issues?''

1. General comments about paragraph (h):

API objected to use of the word repair throughout paragraph (h). API contended the exclusive focus of the rule on repairs undermined the holistic approach of the rule. API commented that a key principle throughout the rule is the integration of information, so appropriate mitigative actions can be taken based on a comprehensive assessment. API explained that although actions may consist of repair, other actions such as further testing and evaluation, environmental changes, operational changes, or administrative changes could be appropriate. API advised that the goal should be to ensure operators differentiate defects injurious to a pipeline's integrity from those that are not.

Tosco also commented that requiring repair in all instances was too inflexible, and operators must have the flexibility to address a wide range of conditions.

Response:

To assure the integrity of pipeline segments that could affect high consequence areas, Section 195.452 requires an operator to conduct a variety of assessments. The assessments include baseline and continual integrity assessments of the line pipe and periodic evaluations of entire pipeline systems, to assure the integrity of pipeline segments that could affect high consequence areas. This is accomplished through the continual identification and remediation of potential problems. We agree the word ''repair'' in paragraph (h) might be too narrow to encompass the range of actions an operator could take to address a problem. We intended paragraph (h) to reflect the broader actions an operator must take to address integrity issues that are identified. We further agree that all anomalies identified by an integrity assessment or information analysis might not require repair. Therefore, we replaced the word repair with remediate throughout paragraph (h). Remediate can encompass a broad range of actions, which include mitigative measures as well as repair, that an operator can take to resolve a potential integrity concern. Although we firmly believe repair is necessary to address many anomalies, we recognize repair may not be necessary in all instances. The rule provides the operator flexibility to determine the most appropriate action to take. However, we added language to ensure that whatever action is taken by an operator, it must be adequate to resolve the integrity concern on the pipeline for the long term. We also added a requirement that when an operator chooses to remediate a condition through a reduction in operating pressure, the pressure reduction is not to extend beyond 365 days without the operator taking further action to ensure the safety of the pipeline.

2. Section 195.452(h)(1)—General Requirements: In this paragraph we required an operator to take prompt action to address all pipeline integrity issues raised by the integrity assessment and information analysis, and evaluate all anomalies and repair those that could reduce a pipeline's integrity. An operator was further required to follow § 195.422 in making a repair.

API objected to the words ''prompt'' and ''all'' because these words could be interpreted in their absolute sense; could cause confusion because of the required time frames for addressing certain conditions; and could lead inspectors to require operators to take costly actions to address insignificant anomalies. API recommended deleting these terms.

Tosco suggested the rule only require an operator to comply with § 195.22 when a repair is necessary.

Response:

As explained in the previous section, we replaced ''repair'' with ''remediate'' throughout paragraph (h), allowing for actions other than repair, in order to address integrity threatening pipeline conditions. This will allow an operator flexibility in how to address anomalous conditions on its pipeline.

We did not delete the terms ''prompt'' and ''all.'' The pipeline safety regulations have long incorporated the term ''prompt,'' with consistent enforcement; there is little disagreement between operators and inspectors about its meaning. For the listed conditions, we determined what a prompt time frame should be (viz., immediate, 60 days, 180 days), but leave it to the operator to determine appropriate time frames for other conditions. We kept the word ''all'' because it is a reasonable requirement for an operator to evaluate all conditions indicated by an integrity assessment or the information analysis, in order to determine the significance of each concern. Upon evaluation of the condition, the operator can then determine the appropriate further action to take, if any. We revised the language to clarify that an operator must evaluate all anomalous conditions (i.e., any condition that is irregular, abnormal, deviates from the norm, etc.) and remediate those conditions that could reduce the integrity of a pipeline.

The word ''address'' is used in the introductory paragraph to encompass the process an operator should go through to find and remedy anomalous conditions, i.e., discovery, evaluation, and remediation of the condition through repair or other mitigative action. Using language to capture the process, is consistent with API's comment about the intended goal of the rule. By having an operator address all anomalous conditions raised by the integrity assessment or the information analysis, we envision a process that begins with discovery of a condition or anomaly that poses an integrity concern to the pipeline; continues with an evaluation that includes the analysis of other relevant data about the pipeline (this analysis could also be part of the discovery); and concludes with fixing the problem.

We did not add ''if necessary,'' to the requirement about complying with

§ 195.422, as suggested by Tosco. The rule now uses the word remediate, which should alleviate any confusion about when compliance with § 195.422 is necessary. Section 195.422 applies only to repairs. If actions other than repair are taken, the requirements in the section do not apply.

3. Section 195.452(h)(2)—Discovery of a condition.

The discovery of a condition triggers the time frames (either required by the rule or the operator's schedule) for remediating the condition. We defined discovery as occurring when an operator has adequate information to determine the need for a repair, and we provided examples of when such information might be available, depending on the circumstances. The examples included the receipt of the preliminary internal inspection report, the gathering and integrating of other inspection information, and the receipt of the final internal inspection report. The date of discovery could be no later than the date of the integrity assessment results or the final report.

API objected to tying discovery to a specific point in time because discovery is not usually a single event but occurs over time as information is analyzed. API commented that other provisions of the Integrity Management rule require operators to integrate information from various sources, and tying the date of discovery to the date of the integrity results or receipt of the final report is inconsistent with the concept of integrating data. API maintained that too much emphasis is put on the use of internal inspection tools and the data collected from running these tools through a pipeline. API also commented that the emphasis on the results of in-line inspections in determining what action must be taken, is inappropriate and inconsistent with the rule's intent for information from multiple sources to be integrated in the assessment process. API suggested that rather than tying discovery to the integrity assessment results or final report, discovery should occur when an operator has integrated other inspections, tests, surveillance, controls, or pipeline integrity data with the final inspection report from an in-line inspection vendor or hydrostatic test. API believes this integration should be completed within 90 days from the receipt of the final inspection report.

Tosco expressed similar concerns and suggested the word ''discovery'' not be used, since it has the common meaning of when something is first found and might cause confusion with how the term is used in § 195.56. Instead, Tosco would tie the repair schedules to the determination that a condition requires mitigation, which would be an outcome of the ongoing assessment process.

Chevron also believed it is inappropriate to tie discovery to a specific event because discovery is a process that is subject to change with new information. Chevron suggested language changes identical to those recommended by API.

Response:

We contend that discovery triggers an operator's process to address a condition that could affect the integrity of a pipeline. Therefore, discovery has to occur at a specific point in time to start the period for evaluation and remediation of the condition. The use of the word ''discovery'' here is consistent with how the word has been used in other pipeline safety regulation. However, to allow flexibility the rule provides that the time of discovery can vary depending on circumstances, and does not define discovery to occur at the same time for every operator and every pipeline.

Discovery will depend on circumstances. We revised the rule to provide that discovery occurs when an operator has adequate information about a condition to determine the condition presents a potential threat to the integrity of the pipeline. The ''when'' for an operator to have sufficient information to make a determination will not be the same for every operator and every pipeline. Although the examples in paragraph (h) provide circumstances when discovery might occur, they were intended only as examples. We decided to eliminate the list as it is not exhaustive and may cause confusion. We did keep the performance-based standard to give an operator flexibility when deciding there is adequate information to determine a condition presents a potential threat to its pipeline. However, we put an upper limit on the length of the discovery process. An operator must promptly obtain the information from an assessment to ensure that remediation of a condition which could threaten a pipeline's integrity occurs soon after an integrity assessment. The discovery process (the process for obtaining the adequate information) will end 180 days after an integrity assessment unless an operator can demonstrate that the 180-day period is impracticable.

4. Section 195.452(h)(3)—Review of integrity assessment:

This paragraph, as proposed, required an operator to include in its schedule for evaluation and repair a schedule for promptly reviewing and analyzing integrity assessment results. After March 31, 2004, an operator's schedule had to provide for this review within 120 days of conducting each assessment. The operator also had to obtain and assess a final report within an additional 90 days.

API objected to setting a fixed period for the review of integrity assessment results. API commented that the language confused the role of the vendor who conducts a specific test or provides interpretive results, with the operator who conducts the integrity assessment and uses information from sources other than in-line inspections in performing those assessments. API explained that an operator contracts with the vendor for a specific service that is part of an overall integrity assessment.

API also expressed concern that increased demand for inspection services would likely affect the time in which tool vendors deliver the reports. API stated that it is unlikely that operators will be able to meet the deadlines for every tool run and for every type of tool, as many types of tools are on the leading edge of development. API suggested that the rule: require review of integrity tests and inspections (rather than assessments); provide for integrating other appropriate data with the inspection/test results; and allow for a delay in schedule beyond the specified deadlines as long as an operator provides a reasonable explanation for the delay.

Tosco commented that the two separate time periods is confusing; that if assessment of inspection results must be accomplished within 120 days, it is not clear what additional evaluation is required within 90 days of obtaining the report of an inspection.

Response: We wish to note: an integrity assessment should not be confused with an integrity management program. Integrity management applies to the entire pipeline. It is a process that uses the information from an integrity assessment, in conjunction with the periodic evaluation and information analysis, to better manage the risks posed to each pipeline segment that could affect a high consequence area. Assessment is only one part of an operator's integrity management program and applies only to the line pipe. In the integrity management rule an assessment is required as a baseline and then required, periodically, every five years to ascertain the condition of the line pipe in each pipeline segment that could affect a high consequence area. To perform this assessment an operator has a choice of technologies: hydrostatic testing; internal inspection devices; or other technology. The rule clearly states that it is the operator's

responsibility to perform the required baseline and periodic assessments.

Integration of information is a critical part of an operator's integrity management program. An operator must conduct periodic evaluations, which are to include evaluating data from the information analysis. The evaluations must be conducted as frequently as needed to assure pipeline integrity, not just when an assessment is done. Thus, the rule leaves it to each operator to best determine the frequency for evaluating its pipelines. We further expect an operator to structure its program to bring the necessary information together at the appropriate time.

The requirement that an operator obtain and analyze an integrity assessment report by a specified time was intended to prompt an operator to obtain a timely report so that it could begin the repair of pipeline integrity-threatening conditions. However, after further analysis of this requirement we believe its implementation would be confusing and likely result in endless disagreements between operators and enforcement personnel. For example, an operator might have a condition on its pipeline that falls into the 60-day category. It could be argued that discovery occurred when the operator received a preliminary report of its integrity assessment, and that the operator was required to remediate the condition within 60 days after it received the report. However, the operator is supposed to have 120 days to review and analyze a preliminary report. Thus, there could be disagreement over whether the 60-day requirement negated the period for review and analysis, or whether the period for initial review and analysis gave the operator an additional 120 days before it was required to remediate the condition.

Furthermore, we realized that the intent of this provision is to ensure an operator promptly addresses anomalous conditions on its pipeline, not to create disagreements about when an operator receives a report, reviews the report, and whether the report was a preliminary or final report.

Rather than create a potential compliance and enforcement nightmare, we eliminated this provision from paragraph (h). Instead, we rewrote the provision (see discussion on discovery above) to give the operator flexibility in what information it uses, and what analysis it needs to discover a condition. Now an operator must promptly obtain sufficient information about a condition to make the determination that the condition presents a potential threat to the integrity of the pipeline. However, the obtaining of this information can take no longer than 180 days after an integrity assessment. 180 days after an integrity assessment, is considered sufficient time for an operator to obtain a report and any other information the operator needs to determine that a condition may present a threat. In limited instances, an operator may be able to demonstrate that the 180-day period is impracticable.

By having a performance-based requirement, yet establishing an upper limit on when discovery can occur, it should be clearer to an operator on how to comply. It should also be clearer to determine when there is a violation, for enforcement purposes.

The revised provisions ensure that an operator takes prompt action following an integrity assessment to remediate anomalous conditions and encourage operators to use sophisticated and developing technologies, because the operator will not be dependent on the report from the vendor.

5. Section 195.452(h)(4)—Schedule for repairs: This paragraph required an operator to complete repairs according to a schedule that prioritizes conditions for evaluation and repair. The schedule was based on risk factors used for establishing the baseline and continual integrity assessment schedules. An operator would be allowed to notify RSPA/OPS when it could not meet the schedule and provide a justification for the delay. Notice was to be sent to the address in § 195.58 or to the facsimile number in § 195.56.

API recommended the reference to the risk factors be deleted because the factors are appropriate for establishing re-inspection intervals but not for prioritizing mitigative actions.

Tosco questioned, in the event an operator could not meet its schedule, whether the notification required should also be sent to the appropriate State agency in those States that are certified under Section 60105 of the Federal Pipeline Safety Statute. Tosco also noted that because § 195.58 applies to subpart B and § 195.56 applies to Safety Related Condition reports, we should reference the integrity management notification in these sections.

Response:

It is likely the results of an integrity assessment will be the principal basis for scheduling a condition for remediation. These results will generally indicate the significance of anomalies so operators can establish their relative importance for remediation. However, RSPA recognizes that there may be other factors an operator needs to consider in prioritizing the conditions for remediation, and agrees that requiring an operator to base its schedule on risk factors is unnecessary. We deleted this requirement from the rule and will leave it to the operator to determine how best to set up a schedule for evaluation and remediation of conditions identified from the assessment. Of course, an operator must document the basis for how it prioritizes conditions in its schedule.

As for where an operator is to send a notification when it is unable to meet its schedule, the language clearly provides the address and facsimile numbers for sending the notification. Although we see no reason for confusion about where to send a notification, we added a new paragraph (m) to the integrity management rule that contains the address and facsimile number for sending notification. This paragraph now contains the current room number and facsimile number for sending any notification required by § 195.452.

The rule continues to require operator notification to RSPA/OPS. We will then ensure that the relevant Regional office receives the notification for forwarding to a certified State. Having the notification come to RSPA is consistent with the filing of other reports, such as the safety-related condition report and accident report. As RSPA plans to keep a data base of notifications, it is most practicable for it to be the notified agency rather than State safety agencies. It also prevents a burden to operators of trying to determine which agencies should be notified. Requiring all notifications under the Integrity Management rule first come to RSPA/OPS, eliminates any potential confusion about where a notification should be sent.

When a certified State adopts the integrity management regulations, it may also add a requirement for notification by intrastate hazardous liquid operators.

6. Section 195.452(h)(5)—Special requirements for scheduling repairs:

This paragraph provided a list of certain conditions that require either immediate repair, repair within 60 days, or repair within six months. This paragraph also listed other conditions an operator would be required to evaluate and repair, but did not specify the time frame.

Although not directly affected by this rulemaking, Enron maintained that the prescriptive time frames for certain conditions were not appropriate for the conditions, forcing operators to seek extensions. Enron further commented

that the descriptions of the conditions were open to interpretation.

Immediate repair conditions: This subparagraph provided a list of conditions that require immediate repair. An operator is further required to temporarily reduce operating pressure or shut down the pipeline until the operator could complete the repair, basing the temporary operating pressure reduction on remaining wall thickness.

API acknowledged that the conditions we listed as immediate repair conditions are those where the indicated anomaly may suggest the potential for imminent failure. However, API objected to limiting an operator's actions to address these conditions to repair of the condition. API recommended renaming these immediate concern conditions, and allowing an operator to take actions other than repair. API gave the example of a pipeline over-designed for wall thickness, as able to remain in service at very low pressure and not subject to imminent failure, even with metal loss greater than 80 percent of nominal wall thickness.

API further stated that limiting an operator's discretion on reducing operating pressure to remaining wall thickness may be inappropriate in many situations (e.g., dents with indicated metal loss) and supported by engineering calculations. API suggested that the original wall thickness in some pipelines may have been above that needed to contain current maximum operating pressure, and recommended basing pressure reduction on an engineering assessment that includes all the potential factors that may contribute to pressure containment.

Chevron recommended we remove the condition of ''dents on the top of the pipeline with any indicated metal loss'' from the immediate repair category. Chevron agreed such dents may be serious, but contended there is insufficient data to prove that these types of anomalies are of immediate concern. Chevron also believed an immediate repair requirement related to such anomalies would be difficult to meet because corrosion internal inspection tools do not always identify such dents, and those vendors that claim the tools can identify such dents cannot correctly size and identify them. Chevron recommended we place these types of anomalies in the 60-day category, and reword the anomaly description to include known topside dents that exceed 6 percent of the nominal pipe diameter with any (emphasis in the original comments) indicated metal wall loss. In addition, Chevron recommended RSPA work with industry to develop a pressure calculation that will determine the level of pressure reduction required (dependent on the size of the dent) to operate the pipeline safely.

Response:

We allowed an operator latitude in how it addresses most conditions, by changing the word repair to remediate throughout paragraph (h). However, we firmly believe that certain conditions, due to the immediate threat they pose to a pipeline's integrity and to a high consequence area, are best addressed by repair. We continue to list these conditions as ''Immediate repair conditions.'' An operator must repair these conditions; and until the repair is completed, either reduce operating pressure or shut down the pipeline.

We agree that a situation might exist where an over designed pipe segment operating at a lower pressure could withstand maximum operating pressure, even with 80% wall loss. However, we find it unacceptable for an operator not to immediately repair a segment of pipeline where less than 20 percent of original wall thickness remains. Wall loss exceeding 80% indicates something significant is occurring on the pipeline.

We also do not agree with Chevron's suggestion that ''dents on top of the pipeline with indicated metal loss'' do not require immediate repair because they are hard to identify. We acknowledge current inspection techniques may not readily identify dents with metal loss. The rule does not require an operator to identify such conditions. The rule simply specifies that when such conditions are identified, an operator must repair them immediately. This type of dent is also classified as an immediate concern in the most recent draft of API–1160, ''Managing System Integrity for Hazardous Liquid Pipelines.'' Therefore, we are not removing this condition from the list of immediate repair conditions.

The reduction in operating pressure, or the shutdown of the pipeline, provides an additional margin of safety. This requirement is consistent with § 195.401(b). This established regulation requires an operator to correct conditions that could adversely affect safe operations in a reasonable time and not operate the affected part of the system until the condition is corrected, if it is of such a nature that it presents an immediate hazard to persons or property.

We agree that pressure reductions should be based on an engineering evaluation, and changed the final rule accordingly. Although it is appropriate to base the pressure reduction on the remaining wall thickness for corrosion, this may not be the best method on which to base a pressure reduction for dents and gouges. We modified the requirement so that an operator must calculate the temporary reduction in the operating pressure using the formula in section 451.7 of ASME/ANSI B31.4.

In response to concerns about the rule confusing the role of vendors with that of operators, we clarified the language in one of the listed conditions concerning the person responsible for making certain determinations about a condition. We revised the language so that now it is the person designated by the operator to evaluate assessment results, who is to determine whether an anomaly requires immediate action.

60-day conditions:

As proposed, this paragraph required an operator to schedule for evaluation and repair all dents (other than those listed as immediate repair conditions), regardless of size, located on the top of the pipeline (above the 4 and 8 o'clock position) within 60 days of discovery of the condition.

API agreed with placing special emphasis on investigating anomalies that represent potential excavation damage on the top of the pipe. However, API contended that requiring repair of any topside dent, regardless of size, would preclude operators from making appropriate engineering judgments about anomalies that differ in character and risk profile from one pipeline to another.

API contended that increasing sensitivities of inspection tools could result in ''hundreds or even thousands'' of topside line indications, only some of which will be a result of third-party damage. (Colonial and Chevron made the same comment). To better focus resources on areas of highest risk, API recommended we specify dents that are in excess of three percent of pipeline diameter and are located in a high population or other populated area, as 60-day conditions and include remaining dent-type defects as 6-month conditions. API believes this conservatively reduces by half the ASME B31.4 provisions, which require removal or repair of dents exceeding a depth of six percent of nominal diameter. API explained that the focus on high population areas and populated areas is appropriate because third-party activity is more likely to occur in these areas. (Chevron recommended these same changes). API further recommended excluding dents less than 0.25 inches for small diameter pipe (less than NPS 12) to recognize mill imperfections that fall within manufacturing tolerances. API maintained that operators have

conducted verification digs on many such small defects identified by past in-line inspections to demonstrate that these indications do not threaten pipeline integrity.

Colonial reported in its experience, in-line inspection identified hundreds of bending shoe marks, smooth dents, and minor mill imperfections that fall within manufacturing tolerances. However, Colonial found these indications to be neither injurious to the pipeline nor the result of third-party damage. Colonial suggested that increased focus on these indications would result in dilution of resources and diversion of attention from higher risks. Colonial recommended we exclude ''smooth dents, bending anomalies, and mill defects that may be identified through engineering analysis and data integration including data gathered from previous excavations and inspections.''

Chevron recommended we limit the 60-day conditions to known topside dents in excess of six percent of the nominal pipe diameter with any indicated metal loss, and that occur within a high population area or other populated area.

Tosco would not limit the 60-day conditions to topside dents. Tosco explained that an operator must also evaluate dents located at the bottom of the pipe because they may indicate that the pipe has been damaged by lifting the line with excavation equipment.

Response:

Although commenters expressed concern about internal inspection tools not being able to detect immediate repair conditions, they also expressed concern about the tools finding too many of the 60-day conditions. We reconsidered what conditions an operator should address within 60 days from discovery. We decided to limit those conditions to large dents (i.e., those dents in excess of three percent of pipeline diameter) on the top of the pipeline and to dents on the bottom of the pipeline that contain stress concentrators because these types of dents are more likely to impair the integrity of the pipeline. We want the rule to encourage the use of more sophisticated inspection tools, as these tools become available. By modifying the list of 60-day conditions so that operators can better focus resources on remediating those conditions most likely to pose a threat to the integrity of a pipeline and to a high consequence area, operators will be encouraged to use more sensitive tools.

We do not agree that the 60-day conditions should be limited to conditions found in high-population and populated areas. While it may be possible that third-party damage is more likely to occur in these areas, such damage can also occur in other areas. There is no reason why third party damage to a pipeline in an unusually sensitive environmental area should not be addressed as promptly as third party damage to a pipeline in another high consequence area. We make no distinction in the final rule between dents identified in populated areas and dents identified in other areas defined as high consequence.

We did not make the change suggested by Tosco to include all dents located on the bottom of the pipe. We recognize that excavation damage limited to the bottom of pipe can occur, but understands it to be much less prevalent. However, we included under the 60-day conditions dents located on the bottom of the pipeline that have other indicators of damage, such as evidence of cracks or stress risers within the dent that would indicate a need for more immediate action. Significant dents (i.e., those dents with a depth greater than six percent of the pipe's diameter) on the bottom of pipe would require remediation within 180 days of discovery. An operator must also evaluate and remediate any other dents on the bottom of the pipeline within a reasonable time.

Six-month conditions: This paragraph listed several conditions an operator would have to schedule for evaluation and repair within six months following discovery.

API recommended the list of 6-month conditions be completely rewritten and offered changes it believes use technically sound descriptions of the potential anomalies. API's revisions include the concept of minimum detection limits, particularly with respect to dent-type anomalies. API claimed this would prevent the inappropriate diversion of safety resources that could result from a requirement to address ''all dents, regardless of size'' as detection capabilities increase. API echoed the comments of Colonial, discussed above, that in-line inspection companies have identified imperfections that fall within manufacturing tolerances and operators have conducted many verifying digs to demonstrate that these anomalies do not affect pipeline integrity. Colonial's comments in that regard are applicable also.

Chevron also recommended a complete rewrite of the six-month conditions for the same reasons as API, and proposed language substantially the same as API's. Differences exist in addressing situations in which ''predicted burst pressure'' is less than established maximum operating pressure (API uses the term ''safe operating pressure''). API would limit the need to evaluate metal loss located at foreign pipeline crossings, to instances with greater than 50 percent wall loss, while Chevron would address those with greater than 30 percent wall loss.

Enron also commented that several of the listed conditions could require an expensive, time consuming, and non-productive diversion of safety resources. Enron believed evaluating dents with metal loss or dents affecting pipe curvature at a girth or seam weld, could result in numerous excavations. Many in-line inspection devices cannot identify such seams and having to investigate such dents, regardless of their depth, could require significant resources for little safety benefit. Enron raised the same concern regarding the need for unnecessary physical inspections to evaluate and repair corrosion of or along seam welds. Enron suggested that the six-month conditions only specify narrow axial external corrosion. Enron commented that the rule did not appear to allow pressure reduction as an option for addressing areas of general corrosion with predicted metal loss of greater than 50 percent of wall thickness.

Response:

To be consistent in language throughout paragraph (h), we now list the six-month conditions as 180-day conditions. We re-categorized some of the dents listed as 60-day conditions into the 180-day category because they are less severe. To avoid including minor and non integrity-threatening dents that fall within manufacturing tolerance limits, we revised the list of conditions to include dents greater than two percent of pipe diameter. The 180-day conditions category is consistent with the most recent draft of API–1160, ''Managing System Integrity for Hazardous Liquid Pipelines,'' except for minor differences. We included gouges and grooves greater than 12.5 percent of wall thickness, which are not in the API–1160 draft.

Enron's concern regarding potential diversion of resources to address dents affecting seam welds was based on the perception that an operator would need to excavate most, or all dents to determine if they impacted a seam weld (similar logic underlies Enron's concern about the need to investigate corrosion along seam welds). We do not intend to require an excavation in order to identify the location of welds. We clarified the final rule to eliminate

confusion by setting de-minimus values for certain dents.

We also clarified an apparent inconsistency in which we listed weld anomalies with predicted metal loss greater than 50 percent of wall thickness and corrosion of or along seam welds as 6-month conditions. We deleted from the list weld anomalies with a predicted metal loss greater than 50% of nominal wall. The rule now lists as 180-day conditions corrosion of and along a longitudinal seam weld, and metal loss greater than 50% that can affect a girth weld.

Other conditions: Paragraph (h) also listed examples of other conditions an operator would need to schedule for evaluation and repair. API recommended we eliminate this paragraph as they contended it is unworkable and unenforceable. Many of the listed conditions, according to API, are not pipeline conditions but describe characteristics of the conditions as they might appear in raw inspection data. API argued that this paragraph oversimplifies the task of using past data in evaluations.

Tosco also commented that the listed conditions seem to relate to an assessment using internal inspection tools, and conditions identified by other means of assessment (e.g., direct assessment) might not be addressed if this list were considered exhaustive.

Enron commented that because the list of other conditions contain vague descriptions (e.g., over a large area, abrupt in nature, reflect a change, near casings), compliance with and enforcement of these requirements will be arbitrary, inconsistent and result in numerous disagreements between operators and regulators. As an example, Enron explained that a strict interpretation of the requirement requiring an operator to evaluate data that reflect changes since the last internal inspection, could include any change, no matter how small, or even one indicating an improvement. Enron argued for us to allow operators a reasonable degree of latitude in making decisions regarding what conditions must be evaluated, and requested we provide guidance in the rule on this latitude and not develop it through enforcement and interpretation. Finally, Enron maintained the repair requirements are likely to result in differing interpretations by different regulatory agencies.

Response:

The paragraph listing other conditions is not intended as an exhaustive list, but simply a list of some of the conditions an operator was to address in its schedule. We wrote paragraph (h), as well as other provisions of section 195.452, to include performance-based and, when necessary, prescriptive language. The rule tries to balance the need of an operator for flexibility with the need for clear and enforceable regulations.

Although we strive for clarity in a regulation, language is an imprecise instrument and is invariably subject to different interpretations. We face this challenge in every rulemaking, yet we enforce the regulations with a modicum of difficulty. Nonetheless, in response to the comments, we modified the list of other conditions to give better descriptions of certain conditions an operator should address, and we relocated the list to Appendix C. This list will now offer guidance to operators on conditions they should be prepared to evaluate and remediate. An operator will now be required to evaluate and remediate conditions other than those listed as immediate repair, 60-day, and 180-day conditions, and in so doing to consider the guidance provided in Appendix C.

Again, we want to emphasize that the conditions listed as immediate repair, 60 day, and 180-day are not an exclusive list of conditions an operator will be required to evaluate and remediate. These are simply some of the conditions that may show up. The argument that because a condition was not listed in paragraph (h) or in the Appendix C guidance and so an operator did not know it was required to evaluate and remediate the condition, will never be accepted.

Comments on other provisions in the final rule:

The Integrity Management Rule issued on December 1, 2000, was a final rule. We only sought comment on the repair provisions in paragraph (h) due to the substantive changes made from those initially proposed. All other provisions of the rule were previously subject to notice and comment. Therefore, we will not address comments aimed at other provisions in the rule, in this document.

Paragraph (h) Requirements

Paragraph (h) of § 195.452 requires an operator to take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis. Addressing all conditions means an operator must evaluate all anomalous conditions and remediate those which could reduce a pipeline's integrity. The actions an operator may take to remediate a condition include a range of mitigative and other actions, including repair. However, the action taken must be adequate to ensure the condition is unlikely to present a long-term threat to the integrity of the pipeline.

The time frames for evaluating and remediating certain conditions begin when the condition is discovered. Discovery of a condition occurs when an operator has adequate information to determine a condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make the determination that a condition presents a potential threat to the integrity of the pipeline. Thus, an operator has flexibility determining when it has sufficient information for discovery. However, the discovery process will end 180 days after an integrity assessment, unless the operator can demonstrate that the 180-day period is impracticable.

Discovery triggers the time frames for remediating a condition. An operator must have a schedule providing time frames for evaluating and completing remedial action on a condition.

For most conditions, it is left to each operator to determine how to prioritize the conditions for evaluation and remediation. An operator must be able to justify its prioritization. The rule provides the time frames in which an operator must complete repair or remediation of certain conditions. These are listed as immediate repair conditions, 60-day conditions and 180-day conditions. Of course, the rule cannot identify all conditions an operator will have to evaluate and remediate. A condition an operator discovers may qualify as an immediate repair, 60-day or 180-day condition, even though it is not listed in the rule. The rule simply provides common examples of such conditions.

The rule further provides that an operator is to include in its schedule, conditions other than those listed. Example of some conditions that could show up during an integrity assessment are provided in the Appendix C guidance. The list in the Appendix is not an exhaustive list.

An operator may deviate from the scheduled time frames for remediation of a condition, if the operator justifies the reasons why it cannot meet the schedule and the changed schedule will not jeopardize public safety or environmental protection. An operator's justification for a deviation would be one of the records the operator is required to maintain for inspection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary

reduction in operating pressure. The operator would be required to provide RSPA/OPS notice by mail or facsimile.

Corrections to Section 195.452

The rule allowed two limited exceptions for when an operator could seek a variance from the five-year re-assessment intervals. One exception (paragraph (j)(4)(i)) is if an operator can justify, on an engineering basis, for a longer assessment interval. Among other requirements, an operator is to support the justification with the use of other technology that provides an understanding of the line pipe equivalent to that provided by the other allowable assessment methods. However, instead of referencing the assessment methods listed in paragraph (j)(5), the rule incorrectly referenced (j)(2), the paragraph addressing the periodic evaluation. We corrected the reference.

The second exception (paragraph (j)(4)(ii)) allows a variance because of unavailable sophisticated technology. For this exception an operator is to notify OPS 180 days before the end of the five-year interval. However, the rule further provided that an operator would then have to complete the assessment within 180 days. This requirement was incorrectly included and we deleted it. If an operator has to complete the re-assessment within 180 days of its 180-day notice, the operator would be completing the re-assessment within the five-year period. Therefore, with this requirement the exception allowing an extension is illusory. We deleted the requirement and instead, now specify that with its notice, an operator is to provide an estimate of when it will complete the re-assessment.

Advance notice to OPS is required before an operator conducts a continual integrity assessment using alternative technology. Paragraph (j) (5) (iii) of the final rule gave this period as 60 days. This was incorrect. The advance notification period should be 90 days, to be consistent with the advance notification period required when an operator uses alternative technology for the baseline assessment. We corrected the time period.

In paragraph (l), we inadvertently left out the number (1) before the first paragraph. We corrected this oversight.

We also corrected the grammar in several places in the Appendix C guidance.

Clarifications and Non-Substantive Revisions to Section 195.452

In paragraph (a) we clarified that the rule applies to any operator who owns or operates 500 or more miles of hazardous liquid or carbon dioxide pipeline. When we wrote the paragraph describing which operators need comply with the rule, we intended for the phrase ''hazardous liquid'' to include carbon dioxide pipelines. However, we have since realized that because of how hazardous liquid and carbon dioxide are used in other pipeline safety regulations, there may be confusion about whether carbon dioxide lines are included. By changing the language to ''hazardous liquid or carbon dioxide,'' we eliminate any confusion about which operators are to comply.

In paragraphs (c)(1)(i) and (j)(5), questions were raised about the listed methods an operator is allowed to use for an integrity assessment. The questions concerned the application of the methods to low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure. We revised these paragraphs to make clear that the listed assessment methods apply to these types of pipe. Although for these types of pipe, an operator must choose methods that have certain capabilities, and the methods are to be from those listed in the rule.

In paragraph (j)(2) we clarified that the evaluation of assessment results include results from the baseline or periodic integrity assessments. Although an operator may have performed a previous internal inspection, unless the operator uses that as its baseline assessment the operator would not have had to maintain those records because the pipeline safety regulations did not require an internal inspection. This clarification should avoid any disagreement about which integrity assessment records an operator will need for its periodic evaluations.

In paragraph (j)(4)(i), we clarified the language about the requirements for the justification for a variance from the 5-year re-assessment interval for engineering reasons and the requirements for notification to OPS.

Due to changes we made to the terminology in paragraph (h), we revised several other paragraphs of the rule and Appendix C to be consistent with those changes. Affected paragraphs in § 195.452 are (f)(4) and (j)(2), and in Appendix C, VI (16) and VI(18).

We added a new paragraph (paragraph m) to the rule to clarify that the required notification must be sent to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington DC 20590, or to the facsimile number (202) 366–7128. Notification is required when an operator cannot meet its schedule for evaluating and remediating anomalous conditions; uses alternative technology for an integrity assessment; or seeks a variance from the five-year continual assessment interval.

In Appendix C, which contains guidance material for § 195.452, we added a section on conditions other than those listed in paragraph (h), which an operator could find from an integrity assessment and an operator should consider in its schedule for evaluation and remediation. We initially listed these conditions in paragraph (h) but decided they more appropriately fit into the Appendix C guidance. This guidance does not list every possible condition that could arise on a pipeline and an operator should evaluate. We also revised the introductory paragraph to reference the new section.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is not considered a significant regulatory action under section 3(f) of Executive Order (58 FR 51735: October 4, 1993). Therefore, the Office of Management and Budget did not review this rulemaking document.

We sought public comment on any additional financial burden that the repair requirements would have on the hazardous liquid pipeline industry. A supplemental report to the regulatory evaluation to address this issue is placed in the docket. The seven members present at the August 13, 2001, Technical Hazardous Pipeline Safety Standards committee meeting voted unanimously to accept the supplement to the regulatory evaluation. Below is a summary of their supplemental report.

Treatment of Repairs in Cost-Benefit Analysis for the Integrity Management Rule

The final regulatory evaluation supporting the integrity management rule did not estimate the costs associated with repairs to pipe that may occur as a result of the rule. The evaluation instead focused on the costs associated with the planning and integrity assessments required by the rule. The reasons for not evaluating repair costs were:

1. The pipeline safety regulations have always required an operator to repair problems found on its hazardous liquid or carbon dioxide pipelines. (49 CFR 195.401(b)). The primary changes made by the Integrity Management rule were to establish a systematized assessment and evaluation process that

would cause operators to better identify conditions on their pipelines requiring repair. Thus, the additional effort required of operators by the rule is in the planning and assessment process, the costs of which were considered in the regulatory evaluation. Repair of a problem, once it is known, was not a new requirement and was not evaluated because of the assumption that additional costs would not be incurred.

2. The repair criteria in paragraph (h) of the final rule (65 FR 75378; December 1, 2000) were changed from those published with the proposed rule. Accordingly, public comments were solicited regarding the repair criteria. RSPA received comments from six organizations (one trade association, one engineering company, three operators directly affected by the rule, and one operator not directly affected by the rulemaking). None commented on the lack of specific reference to repair costs in the regulatory evaluation.

3. Some commenters identified criteria they believed would require unnecessary excavation and evaluation of minor pipeline anomalies that would not affect a pipeline's integrity. We made changes to the provisions in paragraph (h) in response to these comments. These changes clarify the types of conditions an operator must evaluate and remediate so the focus will be on those conditions that are most likely to affect pipeline integrity. Moreover, the remediation requirements allow an operator flexibility in the action it takes to address a condition that poses a threat to the integrity of its pipeline. These provisions are consistent with the existing requirements in section 195.401(b), and add no additional costs.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This rulemaking was designed to impact only those operators that own or operate 500 or more miles of hazardous liquid or carbon dioxide pipeline. Because of this limitation on pipeline mileage, only 66 hazardous liquid pipeline operators (large national energy companies) covering 86.7% of regulated liquid transmission lines are impacted by this final rule. Based on this, and the evidence discussed above, I certify that paragraph (h) in the final rule addressing the remedial actions an operator is required to take to address integrity concerns on its pipeline will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The pipeline integrity management rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department of Transportation submitted a copy of the Paperwork Reduction Act Analysis to the Office of Management and Budget for its review. The information collection was reviewed and approved by the Office of Management and Budget. The name of the information collection is ''Pipeline Integrity Management in High Consequence Areas.'' The remediation requirements in paragraph (h) of the rule will not add any additional paperwork on hazardous liquid or carbon dioxide pipeline operators as repair requirements must already comply with 49 CFR 195.401(b). This was discussed above in the Regulatory Evaluation section. Therefore, no additional paperwork reduction analysis is necessary.

Executive Order 13084

The remediation provisions of the integrity management final rule were analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments.'') Because these provisions, as well as the other provisions of the final rule, do not significantly or uniquely affect the communities of the Indian tribal governments and do not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

The final rule provisions in paragraph (h) were analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that:

(1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) imposes substantial direct compliance costs on States and local governments; or

(3) preempts state law.

Nonetheless, State public safety representatives were involved throughout the development of the hazardous liquid integrity management rule.

Executive Order 13211

This rulemaking is not a ''significant energy action'' within the meaning of Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

In accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. Section 4332), the Council on Environmental Quality regulations (40 CFR Sections 1500–1508), and DOT Order 5610.1D, we prepared an Environmental Assessment (EA) that analyzed the environmental impacts of the rulemaking addressing integrity management programs for operators owning or operating 500 or more miles of hazardous liquid or carbon dioxide pipeline. In the EA we determined that the rule would not significantly affect the quality of the human environment. The EA and the Finding of No Significant Impact are available in Docket No. RSPA–00–6355. That EA considered the requirements in section 195.452 (h) concerning repairs an operator would have to make to its pipeline following an integrity assessment.

We reviewed the EA in light of the changes we have made to § 195.452 (h), and did not find that any of the changes affected our finding about the environmental impacts of the rule.

List of Subjects in 49 CFR Part 195

Carbon dioxide, High consequence areas, Incorporation by reference, Integrity assurance, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, RSPA is amending part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart F—Operation and Maintenance

* * * * *

Pipeline Integrity Management

2. Section 195.452(a) is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) *Which operators must comply?* This section applies to each operator who owns or operates a total of 500 or more miles of hazardous liquid or carbon dioxide pipeline subject to this part.

* * * * *

3. Section 195.452 is amended by revising paragraph (c)(1)(i) introductory text and paragraph (c)(1)(i)(C) to read as follows:

(c) * * *

(1) * * *

(i) The methods selected to assess the integrity of the line pipe. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

* * * * *

(C) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

* * * * *

4. Section 195.452(f) (4) is revised to read as follows:

(f) * * *

(4) Criteria for remedial actions to address integrity issues raised by the assessment methods and information analysis (see paragraph (h) of this section);

* * * * *

5. Section 195.452 (h) is revised to read as follows:

(h) *What actions must an operator take to address integrity issues?*

(1) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. A reduction in operating pressure cannot exceed 365 days without an operator taking further remedial action to ensure the safety of the pipeline. An operator must comply with § 195.422 when making a repair.

(2) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator can demonstrate that the 180-day period is impracticable.

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety or environmental protection. An operator must notify OPS if the operator cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure. An operator must send the notice to the address specified in paragraph (m) of this section.

(4) *Special requirements for scheduling remediation.*(i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in section 451.7 of ASME/ANSI B31.4 (incorportaed by reference, see § 195.3). An operator must treat the following conditions as immediate repair conditions:

(A) Metal loss greater than 80% of nominal wall regardless of dimensions.

(B) A calculation of the remaining strength of the pipe shows a predicted burst pressure less than the established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G (''Manual for Determining the Remaining Strength of Corroded Pipelines'' (1991) or AGA Pipeline Research Committee Project PR–3–805 (''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(C) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) that has any indication of metal loss, cracking or a stress riser.

(D) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 6% of the nominal pipe diameter.

(E) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(ii) *60-day conditions.* Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(B) A dent located on the bottom of the pipeline that has any indication of metal loss, cracking or a stress riser.

(iii) *180-day conditions.* Except for conditions listed in paragraph (h)(4)(i) or (ii) of this section, an operator must schedule evaluation and remediation of the following within 180 days of discovery of the condition:

(A) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld.

(B) A dent located on the top of the pipeline (above 4 and 8 o'clock position) with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12).

(C) A dent located on the bottom of the pipeline with a depth greater than 6% of the pipeline's diameter.

(D) A calculation of the remaining strength of the pipe shows an operating pressure that is less than the current established maximum operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, but are not limited to, ASME/ANSI B31G (''Manual for Determining the Remaining Strength of

Corroded Pipelines'' (1991)) or AGA Pipeline Research Committee Project PR–3–805 (''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 1989)). These documents are incorporated by reference and are available at the addresses listed in § 195.3.

(E) An area of general corrosion with a predicted metal loss greater than 50% of nominal wall.

(F) Predicted metal loss greater than 50% of nominal wall that is located at a crossing of another pipeline, or is in an area with widespread circumferential corrosion, or is in an area that could affect a girth weld.

(G) A potential crack indication that when excavated is determined to be a crack.

(H) Corrosion of or along a longitudinal seam weld.

(I) A gouge or groove greater than 12.5% of nominal wall.

(iv) *Other conditions.* In addition to the conditions listed in paragraphs (h)(4)(i) through (iii) of this section, an operator must evaluate any condition identified by an integrity assessment or information analysis that could impair the integrity of the pipeline, and as appropriate, schedule the condition for remediation. Appendix C of this part contains guidance concerning other conditions that an operator should evaluate.

* * * * *

6. § 195.452 is amended by revising the last sentence of paragraph (j)(2), revising paragraphs (j)(4), (j)(5) introductory text and (j)(5)(iii), and removing paragraph (j)(6)to read as follows:

(j) * * *

(2) *Evaluation.* * * * . The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

(3) * * *

(4) *Variance from the 5-year intervals in limited situations.*(i) *Engineering basis.* An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation combined with the use of other technology, such as external monitoring technology, that provides an understanding of the condition of the line pipe equivalent to that which can be obtained from the assessment methods allowed in paragraph (j)(5) of this section. An operator must notify OPS 270 days before the end of the five-year (or less) interval of the justification for a longer interval, and propose an alternative interval. An operator must send the notice to the address specified in paragraph (m) of this section.

(ii) *Unavailable technology.* An operator may require a longer assessment period for a segment of line pipe (for example, because sophisticated internal inspection technology is not available). An operator must justify the reasons why it cannot comply with the required assessment period and must also demonstrate the actions it is taking to evaluate the integrity of the pipeline segment in the interim. An operator must notify OPS 180 days before the end of the five-year (or less) interval that the operator may require a longer assessment interval, and provide an estimate of when the assessment can be completed. An operator must send a notice to the address specified in paragraph (m) of this section.

(5) *Assessment methods.* An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

(i) * * *

(ii) * * *

(iii) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

7. Paragraph (k)(1) is redesignated as paragraph (l); paragraph designation ''(1)'' is added after the heading; and paragraph (k)(2) is redesignated as paragraph (l)(2).

* * * * *

8. A new paragraph (m) is added to § 195.452 to read as follows:

(m) *Where does an operator send a notification?* An operator must send any notification required by this section to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW, Washington DC 20590, or to the facsimile number (202) 366–7128.

9. Appendix C is amended by revising the title, adding paragraph (7) in the introductory text, revising paragraphs (7), (8), and (9) of section I.B., removing paragraph (18) from section VI and renumbering paragraphs (19) through (23) as (18) through (22), revising paragraphs (16) and newly designated (18) of section VI, and adding a new Section VII to read as follows:

APPENDIX C TO PART 195—GUIDANCE FOR IMPLEMENTATION OF AN INTEGRITY MANAGEMENT PROGRAM

* * * * *

(7) Types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. * * *

B. * * *

(7) Operating conditions of the pipeline (pressure, flow rate, etc.). Exposure of the pipeline to an operating pressure exceeding the established maximum operating pressure.

(8) The hydraulic gradient of the pipeline.

(9) The diameter of the pipeline, the potential release volume, and the distance between the isolation points.

* * * * *

VI. * * *

(16) integrity assessment results and anomalies found, process for evaluating and remediating anomalies, criteria for remedial actions and actions taken to evaluate and remediate the anomalies;

* * * * *

(18) schedule for evaluation and remediation of anomalies, justification to support deviation from required remediation times;

* * * * *

VII. Conditions that may impair a pipeline's integrity.

Section 195.452(h) requires an operator to evaluate and remediate all pipeline integrity issues raised by the integrity assessment or information analysis. An operator must develop a schedule that prioritizes conditions discovered on the pipeline for evaluation and remediation. The following are some examples of conditions that an operator should schedule for evaluation and remediation.

A. Any change since the previous assessment.

B. Mechanical damage that is located on the top side of the pipe.

C. An anomaly abrupt in nature.

D. An anomaly longitudinal in orientation.

E. An anomaly over a large area.

F. An anomaly located in or near a casing, a crossing of another pipeline, or an area with suspect cathodic protection.

Issued in Washington, DC, on December 21, 2001.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–267 Filed 1–11–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG07

Endangered and Threatened Wildlife and Plants; Reclassification of *Scutellaria montana* (Large-Flowered Skullcap) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This reclassification is based on the substantial improvement in the species' status. Since listing, when 10 occurrences (10 populations) were known, 74 additional occurrences (for a total of 48 populations) have been discovered, and the total known number of individual plants has increased from about 6,700 to more than 50,000. This final rule implements the Federal protection and recovery provisions for threatened plants, as provided by the Act, to large-flowered skullcap.

EFFECTIVE DATE: This final rule is effective on February 13, 2002.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258–3939 or e-mail at *Allen_Ratzlaff@fws.gov,* or contact Ms. Tyler Sykes at the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee, by phone at 931/528–6481 or e-mail at *Tyler__Sykes@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems that are usually from 30.0 to 50.0 centimeters (cm) (11.7 to 19.5 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1.0 to 2.0 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5.0 to 8.0 cm (2.0 to 3.1 in) long and 3.0 to 5.0 cm (1.2 to 2.0 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a ''modified'' leaf) raceme (simple flowering stalk), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a ''cap'' just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1.0 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near the top of the calyx. Flowering occurs from mid-May to early June, and fruits mature in June and early July.

Bridges (1984) stated, ''The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe.'' *Scutellaria montana* could be confused with other species of Scutellaria. Bridges (1984) also listed some important characters of *Scutellaria montana:* (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart-shaped); (4) a midstem with at least some stipitate (short stemmed) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface; (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman (1878) described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata.* Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins, unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana.*

Cruzan and Vege (in preparation [prep.]) determined that populations southeast of Taylor Ridge in northwest Georgia are genetically distinct and lacked a number of alleles present in populations northwest of Taylor Ridge. This division is supported by analysis of chloroplast DNA variation, which indicates that populations of *Scutellaria montana* are divided into two geographically distinct groups of populations that are probably derived from separate Pleistocene refugia (Cruzan and Ferguson, in prep.).

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata.* The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, Scutellaria pseudoserrata has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular ''velvety'' pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata,* both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate (heart-shaped) leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (*in* Shea and Hogan 1998) observed bees (Apiodea) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and hummingbirds occasionally visiting the plants. The long floral tube (3.0 to 4.0 cm or 1.2 to 1.6 in) and a sucrose-hexose (sugar) ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993).

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Walker, and Whitfield Counties in Georgia; and the Cumberland Plateau Province in Sequatchie, Marion, and Hamilton Counties in Tennessee.

According to Bridges (1984), the geological strata underlying the occurrences of *Scutellaria montana* include most of the major slope-forming formations of the region—shale, chert, limestone, and sandstone from Cambrian to Pennsylvanian in age. Most occurrences in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstone and shale. Most of the

occurrences in the Lookout Mountain portion of the Chickamauga-Chattanooga National Military Park are found on Fort Payne, St. Lewis, Warsaw, Monteagle, and Bangor Formations that underlie the Pennington Formations (McKerrow and Pyne 1993). The Georgia portion of the Ridge and Valley is underlain by Paleozoic rock such as sandstone, shale, and limestone (Lipps and DeSelm 1969). The Georgia occurrences are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins, unpublished). Occurrence elevations range from 189 meters (620 feet) to 562 m (1,844 ft) above sea level.

Most populations occur on colluvial soils (loose deposit of soils accumulated at the base of cliff or slope) over bedrock composed of shale, chert, or limestone. The soils are generally rocky, shallow, well-drained, and slightly acidic. Soil depth ranges from deep to a thin layer, no more than 3.0 cm (1.2 in) deep, over bedrock. In Georgia, the soil is generally stony, shaley, or cherty silt loam or silty clay loam ranging in depth from 0.2 m (8.0 in) to 1.4 m (55.0 in). The average pH is 5.6 and ranges from 4.5 to 6.3 (Collins, unpublished).

Bridges (1984) described the habitat of *Scutellaria montana* as ''* * * rocky, submesic to xeric, well-drained, slightly acidic slope, ravine and stream bottom forests in the Ridge and Valley and Cumberland Plateau provinces of Northwestern Georgia, and adjacent southeastern Tennessee (and probably Alabama).'' Bridges (1984) also listed distinguishing characteristics of the forests where *Scutellaria montana* is found as: (1) A history of some natural pine occurrence; (2) a canopy dominated by oaks and hickories; (3) a mostly deciduous shrub layer with some evergreen *Vaccinium*; (4) a moderately dense herb layer with mesic and xeric species; and (5) occurring on well-consolidated Paleozoic to Precambrian strata, often with some exposed rock.

Forest composition data have been collected on sites in the Marshall Forest and Marion County, Tennessee, populations (Faulkner 1993; Collins, unpublished; Lipps 1966). Data from the sites where *Scutellaria montana* was first studied indicated that it occurred in late-successional forests. Studies of other sites suggest that it is more of a mid-to late-successional species (Bridges 1984; Collins, unpublished; Lipps 1966). At a Marion County, Tennessee, site, Faulkner (1993) observed *Scutellaria montana* persisting in an area where timbering activities had occurred and where the plants had been subjected to low-intensity ground fires. He concluded that, while individual plants established before the disturbance may survive, recruitment into disturbed sites is not likely. Fail and Sommers (1993) conducted a study on the Marshall Forest that suggests the associated species *Quercus prinus* (Chestnut oak) and *Oxydendrum arboreum* (Sourwood) may be producing allelopathic agents (toxic compounds) that may be inhibiting the growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially rhizomatous colonial plants, and is not found in thick herbaceous cover (Bridges 1984). While optimal light conditions are not yet known, plants grow in areas that receive a relatively greater amount of light at ground level, generally due to canopy disturbance (Sutter, *in litt.*, 1993). Nix (1993) states that ''canopy coverage is probably the most important environmental factor that influences growth and survival.'' However, disturbances to the canopy accompanied by disturbances to the soil can lead to increases in other herbaceous species that could be detrimental to *Scutellaria montana*.

When we listed *Scutellaria montana* in 1986, 10 populations were known—7 in Georgia (4 in Floyd County, 2 in Walker County, and 1 in Gordon County) and 3 in Tennessee (2 in Hamilton County and 1 in Marion County). Currently, 48 populations (some made up of more than one subpopulation) are known. We have defined a population as an ''occurrence'' that is generally at least 0.5 mile from other occurrences, but site-specific determinations take into account physical barriers (ridges, highways, etc.), contiguous habitat (2 or more occurrences deemed part of a single population could be 1 mile apart on the same ridge or slope), and richness or diversity of the occurrence. Based on criteria in the Large-flowered Skullcap Recovery Plan, a population is considered self-sustaining, or viable, if it has a minimum of 100 individuals.

Georgia is now known to have 29 populations. In Floyd County, there are now 9 known populations (15 occurrences), 5 of which are self-sustaining, ranging in size from a few plants to about 1,300 plants. All of one self-sustaining population and 90 percent of another self-sustaining population are protected (owned by The Nature Conservancy [TNC]), including the largest of the nine populations in the county. The remaining populations are all on private land.

Catoosa County, Georgia, is currently known to have 6 populations (10 occurrences). Three of the populations are self-sustaining, ranging in size from about 140 to more than 300 plants. The largest population receives some protection as it is within Catoosa County Park. The other populations are all on private land or land of unknown ownership. There is also evidence of a site with *Scutellaria montana* on Chickamauga Park (owned by the National Park Service [NPS]) in Catoosa County, but the site has not been surveyed and its status is considered ambiguous according to the Georgia Natural Heritage Program.

Five new populations (8 occurrences) have been discovered in Gordon County, Georgia, though none appear to be self-sustaining (all have less than 100 plants). One population known from Gordon County, Georgia, was extirpated when the area was clearcut early in 1986, prior to the listing of the species.

Walker County, Georgia, has three nonself-sustaining populations (5, 16, and 60 plants, respectively). The population of 16 plants is found on NPS land, and the other 2 are privately owned. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included among populations counted towards attainment of criteria for downlisting).

Murray County has two nonself-sustaining populations, all on private land, and there are currently two nonviable populations (three occurrences) known from Chattooga County, Georgia. One population has only three plants (on U.S. Forest Service [USFS] land), and the other two occurrences that make up the other population are described as having only four plants and ''dozens'' of plants. A single, nonviable population (10 plants) occurs on NPS land in Dade County, Georgia, near the Lookout Mountain population in Tennessee, and a single nonviable population (~60 plants) of unknown ownership has been found in Whitfield County.

Tennessee is now known to have 19 populations. Hamilton County has 14 known populations, 7 of which are considered self-sustaining. These populations range in size from a few plants to more than 2,600 plants. Several Hamilton County populations are made up of multiple subpopulations, some of which are large enough to constitute self-sustaining populations by themselves, but they do not meet the necessary criteria set forth in the recovery plan to be considered separate populations.

Marion County, Tennessee, now has 2 populations ranging in size from about 50 plants to more than 40,000 plants at

the Tennessee River Gorge. The Tennessee River Gorge population is made up of 8 subpopulations, 2 of which contain more than 20,000 plants. All of the smaller Marion County site (55 plants) is protected, and 6 of the 8 subpopulations in the Tennessee River Gorge are protected (less than 1 percent of the plants are not protected).

Three populations (2, 50, and ''several hundred'' plants, respectively) are known from Sequatchie County, Tennessee, with only the latter being self-sustaining. The landowner of the largest population is willing to protect the plant through a donated conservation easement, but the agreement has yet to be formalized.

Previous Federal Actions

Federal Government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on plants considered endangered, threatened, or extinct. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Scutellaria montana* was included in the Smithsonian report and the July 1, 1975, Notice of Review.

We published a revised Notice of Review for Native Plants on December 15, 1980 (45 FR 82480); *Scutellaria montana* was included as a category 1 species. Category 1 species were those for which we had information on file to support proposing them as endangered or threatened. On November 28, 1983, we published a supplement to the Notice of Review for native plants in the **Federal Register** (48 FR 53640). *Scutellaria montana* was changed to a category 2 species in this supplement. Category 2 species were those for which we had information suggesting that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats were not currently known or on file to support the preparation of proposed listing rules. Subsequent to this notice, we received a draft status report on *Scutellaria montana* (Collins, unpublished). This report and other available information indicated that the addition of *Scutellaria montana* to the *Federal List of Endangered and Threatened Wildlife and Plants* was appropriate.

All plants included in the comprehensive plant notices were treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This situation was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, we found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. On September 27, 1985, *Scutellaria montana* was again included as a category 1 species in the revised Notice of Review (50 FR 39526), and on November 13, 1985, we published in the **Federal Register** (50 FR 46797) a proposal to list *Scutellaria montana* as an endangered species. That proposal constituted the next 1-year finding as required by the 1982 amendments to the Act. A final rule placing *Scutellaria montana* on the *Federal List of Endangered and Threatened Wildlife and Plants* as an endangered species was published in the **Federal Register** on June 20, 1986 (51 FR 22521).

Since listing, Federal actions have included a variety of recovery actions funded or carried out by the Tennessee Valley Authority (TVA), NPS, USFS, and the Service, including searches for additional populations, habitat studies, translocations, and land management.

We have conducted numerous consultations under section 7 of the Act involving *Scutellaria montana.* More than 50 consultations have taken place in Tennessee, principally concerning road and bridge construction or maintenance. Most potential conflicts have been resolved early in the informal portion of the consultation process, resulting in our concurrence with ''not likely to adversely affect'' determinations. One formal consultation was conducted that resulted in a ''no jeopardy'' biological opinion. Three informal section 7 consultations regarding this species have taken place in Georgia.

A recovery plan was completed for *Scutellaria montana* in 1996 (Service 1996). The recovery plan provides the following criteria for downlisting: ''If numbers of discrete populations increase to 25 (because of the discovery or establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range), the species will be considered for downlisting to threatened status.'' The recovery plan also provides a description of protected and managed self-sustaining populations as follows: ''A population will be considered adequately protected when it is legally protected and all needed active management is provided. A population will be considered 'self-sustaining' if monitoring data support the conclusion that it is reproducing successfully and is stable or increasing in size. The minimum number of individuals necessary for a self-sustaining population should be considered at least 100 until otherwise determined by demographic studies.''

The criteria for downlisting have been met through both the number of known populations (48) and the number of self-sustaining (viable), protected populations (11) distributed throughout the species' range. Though no formal written agreements have been developed with the principal landowners where protected, self-sustaining populations occur (TNC, the States of Georgia and Tennessee, TVA, and the NPS), managers of this land are committed to the conservation of these populations and are actively involved as part of the recovery effort.

On February 8, 1998, we mailed letters to 94 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering a proposal to reclassify *Scutellaria montana* as a threatened species. We received three written responses (TVA, Tennessee Department of Environment and Conservation, and the Wildlife Resources Division of the Georgia Department of Natural Resources), all in support of downlisting.

Summary of Comments and Recommendations

On July 12, 2000, we published the proposed rule to reclassify *Scutellaria montana* from endangered to threatened status in the **Federal Register** (65 FR 42973), under the authority of the Act. Additionally, we announced this proposal in letters (110) dated July 17, 2000, and in legal notices published in the *Rome News Tribune,* Rome, Georgia, on July 23, 2000; the *Walker County Messenger,* LaFayette, Georgia, and the *Catoosa County News,* Ringgold, Georgia, on July 26, 2000; the *Jasper*

Journal, Jasper, Tennessee, on July 27, 2000; and the *Chattanooga Times,* Chattanooga, Tennessee, on July 28, 2000. Those documents notified affected congressional offices, the governors of Tennessee and Georgia, Federal and State agencies, local governments, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination. We also announced the proposed downlisting through a press release on July 18, 2000, that was also made available on the Service's Southeast Regional home page on the Internet (*southeast.fws.gov*).

Changes in the Final Rule as a Result of the Public Comments

We received four responses during the public comment period (one from a Federal agency, two from State agencies, and one from a conservation organization), all in support of the proposed reclassification. These comments did not result in any significant changes to the final rule. Population data received from the Georgia Department of Natural Resources' Natural Heritage Program are incorporated in this final rule. Key issues raised in the comments are presented below.

Issue 1: One commenter raised concerns that "* * * the qualifications for protected populations be published [as part of consensus opinions] during the downlisting procedure or in a revised Recovery Plan * * * to ensure such populations are viable, have feasible stewardship provisions to ensure the survival of the population, and represent the total range of the species * * *"

Our Response: We agree that further definition of what constitutes a protected population will be valuable for this species and this issue will be considered through the recovery plan revision process.

Issue 2: In the proposed rule we stated that "* * * *Scutellaria montana* was not a significant component of the commercial trade in native plants. Significant commercial trade in *Scutellaria montana* is not currently known to occur or expected in the future, and no significant import or export is expected." One comment letter pointed out that at least one named cultivar of this species is ready to be placed in commercial trade. They also stated that *Scutellaria montana* is unlikely to be collected in the wild and that both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed in all in-State commerce.

Our Response: We have changed this final rule to reflect this information.

Issue 3: Under 50 CFR, subpart G, § 17.71(a) "Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of § 17.61, provided that a statement that the seeds are of 'cultivated origin' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations." One comment letter stated that "cuttings" as well as seeds should be included in this exemption, as this is a common way plants enter the horticultural trade.

Our Response: Cuttings are a common way plants enter the horticultural trade, and plants grown from legally obtained cuttings might logically be allowed under this same exemption. Unfortunately, this oversight can only be corrected by amending the Act or its implementing regulations. If necessary and consistent with species conservation, it is possible to exempt cuttings of threatened species in a manner similar to seeds of cultivated specimens by preparing a special rule under section 4(d) of the Act.

Issue 4: One comment letter stated that "* * * because many of the populations occur on public land in late successional forests, which are still subject to industrial extraction and other development that could impact the species * * * and many of the private-land populations may be subject to projects with Federal implications * * * critical habitat is surely prudent and determinable at this time."

Our Response: In the more than 14 years since this species was listed, no Federal project or federally permitted project has had a significant impact on this species. The NPS, through its own regulations and in accordance with the Act, is unlikely to have a project ever result in significant impacts to *Scutellaria montana.* Similarly, the TVA has been a leader in the recovery of this plant, having implemented various protective measures, management techniques, and surveys for additional populations. The TVA is currently discussing with the Service, in both Tennessee and Georgia, and other stakeholders the possibility of entering into a cooperative agreement to promote the further recovery of this species. Further, more than half of the known plants and most of the largest population are on land owned by the Tennessee River Gorge Trust, a conservation organization that has also been instrumental in protecting this species. Although timber-harvesting activities continue to threaten the species, since listing, no population of large-flowered skullcap has been lost to timber-harvesting. Because (1) critical habitat designation would not result in substantial benefits to the species, (2) there is currently a large backlog of listed species without critical habitat designation—many of which would benefit more from critical habitat designation than this species, and (3) the status of this species is currently improving, we believe our limited funding available for critical habitat designation should be spent on critical habitat designations for species for which such designation would provide more benefit. Furthermore, we expect that all of the appropriation to be made available for critical habitat designation in the near future will be used to comply with existing court orders and settlement agreements. Therefore, we are not proposing to designate critical habitat for *Scutellaria montana* at this time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the *Federal List of Endangered and Threatened Wildlife and Plants.* These factors and their application to *Scutellaria montana* (large-flowered skullcap) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

In 1986, when *Scutellaria montana* was listed as endangered, 7 populations were known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only 2 sites, neither of which was completely protected. At the time of listing, the most significant threats were logging, wildfires, livestock grazing, and residential development. In 1986, 80 percent of the site with the largest known population had been subdivided and was being offered for sale. A large portion of the second largest population at that time was on land owned by TNC and was therefore afforded protection. The third largest population occurred on privately owned land and had no protection from potential land-use changes. All remaining 1986 populations were extremely small, consisting of 4 to 60 plants.

Though this species is under less threat than when listed, largely due to

the discovery of additional populations, and 22 (46 percent) of the 48 known populations are currently being afforded protection through ownership by conservation organizations, county parks, historic sites, or Federal land (11 of these protected populations are considered self-sustaining), threats to the species' habitat and future security still exist. Further, nearly 80 percent of the known plants continue to occur at only two sites in the Tennessee River Gorge population.

Habitat destruction caused by logging, residential development, clearing of wooded areas for pasture, grazing, and wildfire all continue to pose some degree of threat to the species. Prior to listing, one population of *Scutellaria montana* was lost due to clearcutting activities (prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property). Damage caused by off-road vehicles and hikers (trampling) has been noted at several sites, and the maintenance (widening) or rerouting of hiking trails is also a potential threat. Rapid urbanization in and around the Chattanooga area also poses a threat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

When *Scutellaria montana* was listed as an endangered species (1986), it was not a significant component of the commercial trade in native plants. During the comment period for this rule, the Georgia Department of Natural Resources informed us that ''there is at least one named cultivar of this species ready to be placed in commercial trade.'' However, both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed for all in-State commerce. Except for seeds of cultivated origin, inter-State commerce, import, and export are prohibited for threatened species. We know of no reason to believe that trade in accordance with the provisions for protection of threatened species or any other type of current or future utilization pose an appreciable risk to wild populations of *Scutellaria montana.*

C. Disease or Predation

While herbivory by animals, especially deer, has been observed at several sites, herbivory does not appear to be a factor affecting the continued existence of the species at this time. Some individual plants have been affected by disease, but this factor appears to affect only a few individuals and is not a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Though there is less protection afforded to threatened plants than to endangered plants under section 9 of the Act, most of the legal protections conferred under the ESA will remain in place following final reclassification of *Scutellaria montana.* Both Georgia (Ga. Code Ann. §§ 27–3–130 *et seq.*) and Tennessee (Tenn. Code Ann. §§ 70–8–301 *et seq.*) have rare plant protection laws that also protect this species. Georgia has separate laws covering endangered plant and animal species. (Ga. Code Ann. §§ 27–3–130 *et seq.*; §§ 12–6–171 *et seq.*) Listing under both acts is limited to scientific and commercial criteria. Habitat acquisition is authorized but not required. The acts do not require recovery plans or agency consultation. Violations constitute a misdemeanor. In addition, the Georgia Environmental Policy Act requires the assessment of major proposed agency impacts on biological resources. (Ga. Code Ann. § 12–16–1 *et seq.*)

In Tennessee, the Rare Plant Protection and Conservation Act authorizes investigation, listing, and education efforts. (Tenn. Code Ann. §§ 70 8–301 *et seq.*) Listing is based on scientific and commercial data only. The act cannot be used to interfere with, delay, or impede any public works project. Penalties include fines up to $1,000 and/or imprisonment of up to six months. Tennessee does not have an ''environmental protection act.'' However, by statute, any person or agency planning an energy project must submit an analysis of the environmental impacts of the project. (Tenn. Code Ann. § 13–18–103) In addition, any person conducting oil and gas activities must prevent or mitigate adverse environmental impacts. (Tenn. Code Ann. § 60–1–202) Tennessee has private land conservation programs. For example, conservation easements are authorized by statute. (Tenn. Code Ann. §§ 66–9–301 *et seq.*) Owners of land subject to a conservation easement are not liable for injury to a third person using the land. (Tenn. Code Ann. § 11–10103) A Forest Stewardship Program assists private landowners with conservation issues. In addition, the Tennessee Biodiversity Program encourages private landowners to protect critical areas. While considerable progress has been made towards recovery of *Scutellaria montana* under these regimes, some threats, such as habitat modification, remain sufficiently serious that the species still requires protection under the Act until the number of total and protected populations can be further increased. Such additional increases in the total number of populations, particularly those under protection, may sufficiently reduce the risk of extinction, even under these current State laws, that concerns under Factor D are no longer an obstacle to delisting *Scutellaria montana.*

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Scutellaria montana appears to be quite sensitive to the amount of light available. To the extent that human activities facilitate the growth of non-native, invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), competition with these species for light currently remains a problem for some populations of *Scutellaria montana.* These nonnative species are likely to continue to be a problem where disturbance allows these species to become established in close proximity to *Scutellaria montana.*

Several investigators have noted a low reproductive capacity for *Scutellaria montana.* The percentage of flowers that form fruit has been recorded at 30 and 44 percent in the Marshall Forest (Kemp and Knauss 1990), and in another study, 91.5 percent of the plants did not form fruits (Kemp 1987). This reproductive rate is extremely low compared with other *Scutellaria* species that have 75 to 93 percent of the flowers producing mature nutlets (Collins 1976).

Scutellaria montana also produces fewer seeds per fruit compared with other members of the genus. Kemp and Knauss (1990) found that the fruit averaged 2.2 to 2.3 seeds rather than the 4 seeds that are possible. Similarly, Cruzan (*in* Shea and Hogan 1998) found pollen present on 60 percent of the styles, but only 15 percent of these flowers set fruit, with an average of two seeds per fruit. As mentioned previously, the long floral tube and a sucrose-hexose ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993). However, after several hundred hours of observations over 4 years, Cruzan and Hopkins (in prep.) found these pollinators appeared to be rare or lacking and believed that the low seed production is largely because of the lack of pollen deposition on stigmas (Cruzan and Hopkins, in prep.), indicating a possible loss of, or decline in, an associated pollinator(s). The loss/decline of an associated pollinator, particularly one able to travel relatively

long distances, could also explain the apparent inbreeding noted at smaller and more isolated populations of this self-compatible species (Cruzan and Vege, in prep.).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria montana* in determining this final rule. Based on this evaluation, the preferred action is to reclassify *Scutellaria montana* from an endangered species to a threatened species. The recovery plan for *Scutellaria montana* states that the species is qualified for downlisting to threatened: ''* * * If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range) * * *'' The criteria for downlisting have been met through both the number of known populations (48) and the number of viable (self-sustaining), protected populations (11) distributed between both States in the species' range.

Available Conservation Measures

All of 23 populations of *Scutellaria montana* and a portion of 9 others are privately owned (all of 1 population and a portion of 2 others are owned by conservation groups, accounting for nearly 43 current page percent of all plants), 1 is County-owned, a portion of 1 is City-owned, and 1 entire population and a portion of 5 others are State-owned. State-owned land harbors more than 40 percent of the known plants, second only to the number owned by conservation organizations. In addition, 10 entire populations and portions of 3 others are on Federal land (TVA, NPS, and Department of Defense [U.S. Army]).

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. However, unlike endangered plants, not all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.67, apply. However, section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Those prohibitions that do apply to threatened plants, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions (50 CFR 17.71) provided their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought or issued because the species is not a common cultivar or common in the wild.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Athens Field Office, U.S. Fish and Wildlife Service, 247 South Milledge Avenue, Athens, Georgia 30605 (Phone 706/613–9493), or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (Phone 931/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–4176; Fax 404/679–7081).

This rule changes the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Reclassification maintains most of the protections for this species under the Act. Anyone importing or exporting, transporting in interstate or foreign commerce in the course of a commercial activity, selling or offering for sale in interstate or foreign commerce, or removing and reducing the species to possession from areas under Federal jurisdiction will be subject to a penalty under section 11 of the Act. Although less than those for endangered species, substantial penalties apply to illegal take of threatened species. Federal agencies will continue to be responsible for ensuring that their activities are not likely to jeopardize the continued existence of *Scutellaria montana,* as prescribed by section 7 of the Act.

This final rule is not an irreversible action on the part of the Service. Reclassifying *Scutellaria montana* back to endangered status is possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Paperwork Reduction Act

This final rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by revising the entries for *Scutellaria montana* under ''FLOWERING PLANTS'' in the ''Status'' column to read ''T'' instead of ''E'' and in the ''When Listed'' column to read ''234, 720''.

Dated: November 15, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–665 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010710169–1169–01; I.D. 060401B]

RIN 0648–AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Extension of expiration date and technical amendments.

SUMMARY: NMFS amends the emergency rule extension regulations governing the Atlantic highly migratory species (HMS) fisheries that closed the Northeast Distant Statistical Reporting (NED) area, required modifications in deploying pelagic longline fishing gear, and requiring sea turtle handling and release guidelines for bottom and pelagic longline fisheries to be posted in the wheelhouse. This revision is needed to make the regulations consistent with the June 14, 2001, Biological Opinion (BiOp) on the Atlantic HMS Fishery Management Plan and its associated fisheries. The intent of this revision is to adjust the effective dates listed in the July 13, 2001, emergency rule and in the September 24, 2001, emergency rule revision.

DATES: The expiration date of the rule published September 24, 2001 at 66 FR 48812 is extended from January 9, 2002 to July 8, 2002. The amendments in this rule are effective January 10, 2002, to July 8, 2002. Comments must be received by February 28, 2002.

ADDRESSES: Written comments may be sent to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West

Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the documents mentioned in this emergency rule revision may also be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301–713–2347 or via fax at 301–713–1917.

SUPPLEMENTARY INFORMATION: On June 14, NMFS issued a BiOp that found that the Atlantic pelagic longline fishery is jeopardizing the continued existence of loggerhead and leatherback sea turtles. The BiOp estimated that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. To achieve the necessary reduction, the BiOp required the implementation of a reasonable and prudent alternative that was composed of several elements including an area closure and gear modifications.

On July 13, 2001, NMFS issued an emergency rule (66 FR 36711) to implement the BiOp. Specifically, the regulation closed the NED area, required specific gear deployment modifications, and required that the safe handling and release guidelines for sea turtles caught in pelagic longline gear be posted aboard all vessels permitted for HMS fisheries. The emergency rule is effective until January 9, 2002.

On September 24, 2001 (66 FR 48812), the July 13, 2001, emergency rule was revised to adjust the requirement to post the sea turtle handling and release guidelines in the wheelhouse of all HMS permitted vessels. The safe handling guidelines are specific to longline interactions and would not be applicable to vessels using other gear such as seines or gillnets. Accordingly, NMFS revised the regulation to apply only to HMS permitted vessels having pelagic and bottom longline on board.

On December 13, 2001 (66 FR 64378), NMFS published a regulation that extended the July 13, 2001, emergency rule for 180 days. This measure insures that the regulations do not lapse as NMFS prepares a proposed rule and environmental impact statement to implement the required measures of the BiOp. The emergency rule extension maintains the sea turtle protection measures through July 8, 2002.

In extending the July 13, 2001, emergency rule, NMFS inadvertently omitted the September 24, 2001, revisions and the necessary references to the new effective dates. This emergency rule revision adjusts the effective dates established in the July 13, 2001, emergency rule and the September 24, 2001, emergency rule adjustment to make the effective dates consistent with the intent of the December 13, 2001, emergency rule extension.

Classification

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(3), finds that providing prior notice and opportunity for public comment on this revision would be contrary to the public interest. This revision is necessary to maintain the intended effective dates of the December 13, 2001, emergency rule extension. An opportunity was provided for public comment on the extension of the emergency rule and on the BiOp that was the basis of the emergency rule. The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of these regulatory amendments. As the previously implemented regulations will expire on January 9, 2002, delaying the effectiveness of these amendments would create a lapse in the protection measures for the threatened and endangered sea turtles.

Because prior notice and opportunity for public comment are not required for this emergency rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This action is not significant under the meaning of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: January 7, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

§ 635.21 [Amended]

2. In § 635.21, paragraph (a)(4), added at 66 FR 48812, September 24, 2001, and extended by this rule is amended by removing ''effective September 15, 2001, through January 9, 2002'' and adding ''effective January 10, 2002, to July 8, 2002'' in its place.

3. In § 635.21, paragraph (c)(5)(iii), added at 66 FR 36711, July 13, 2001, and extended at 66 FR 64378, December 13, 2001, is amended by removing ''effective August 1, 2001, through January 9, 2002'' and adding ''effective January 10, 2002, to July 8, 2002'' in its place.

4. In § 635.21, paragraph (c)(6)(v), added at 66 FR 36711, July 13, 2001, and extended at 66 FR 64378, December 13, 2001, is amended by removing ''effective July 15, 2001, through January 9, 2002'' and adding ''effective January 10, 2002, to July 8, 2002'' in its place.

* * * * *

[FR Doc. 02–775 Filed 1–19–02; 11:30 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 236

[INS Order No. 1906–98]

RIN 1115–AF05

Processing, Detention, and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On July 24, 1998, at 64 FR 39759, the Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register** proposing to establish procedures for processing juveniles in Service custody. Specifically, the proposed rule set forth proposed service policy for the release of juveniles from custody, as well as standards regarding the placement of juveniles in Service custody into state-licensed programs and detention facilities. The rule also proposed amendments concerning the transportation and transfer of juveniles in Service custody. The original comment period for the proposed rule closed on September 22, 1998. This document reopens the comment period to March 15, 2002. The Service is reopening the comment period to hear from the public on the following issues: determinations of who speaks for the child with respect to immigration matters, circumstances under which detention in a secure juvenile facility is necessary, and any additional ideas that may be helpful to minimize the number of juveniles who must be placed in Service custody.

DATES: Written comments must be submitted on or before March 15, 2002.

ADDRESSES: Please submit written comments to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 1906–98 on your correspondence. You may also submit comments to the Service electronically at *insregs@usdoj.gov.* When submitting comments electronically please include INS No. 1906–98 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Mark A. Matese, Director, Juvenile Affairs Division, Headquarters Office of Detention and Removal, Immigration and Naturalization, 425 I Street, NW., Washington, DC 20536, 202–305–2734 or 202–353–8228.

SUPPLEMENTARY INFORMATION:

Why is the Service Reopening the Comment Period?

The Service is currently examining the appropriate infrastructure and policies for managing and developing its programs relating to unaccompanied minors. As part of that process, the Service has decided to offer the public an additional opportunity to comment on the proposed rule, and particularly invites comments that relate to issues that have come to the public's attention since the close of the original comment period in 1998. The Service is reopening the comment period to hear from the public on the following issues: determinations of who speaks for the child with respect to immigration matters, circumstances under which detention in a secure juvenile facility is necessary, and any additional ideas that may be helpful to minimize the number of juveniles who must be placed in Service custody.

Where Can the Public View the July 24, 1998 Proposed Rule?

The July 24, 1998, proposed rule can be viewed on the Government Printing Office Web site at: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1998register&docid=98–19712–filed*

Dated: November 19, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–811 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 58P, 60, A60, B60, and 65–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 58P, 60, A60, B60, and 65–88 airplanes. This proposed AD would require you to install new exterior operating instruction placards for the exit doors. The proposed AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by the proposed AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible or understandable, this could result in the inability to open the exit door during an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 12, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer,

FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

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

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–32–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA believes that the instructions for opening the exit doors are either not visible or not easy to understand on Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes. This is based on an accident that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What are the consequences if the condition is not corrected? If the exterior door operating instruction placards are not visible or understandable, this could result in the inability to open the exit doors during an emergency situation.

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

What are the provisions of this service information? The service bulletin includes procedures for installing new exterior placards with improved operating instructions for the exit doors on the affected airplanes.

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

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

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

What would this proposed AD require? This proposed AD would require you to install new exterior operating instruction placards for the exit doors.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 850 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours X $60 per hour = $120	$40	$160	$136,000

The manufacturer will provide warranty credit for parts to the extent noted under MATERIAL INFORMATION in Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is ''within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first''.

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of the proposed AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would this proposed AD impact various entities? 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2001–CE–32–AD.

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

Model	Serial Nos.
58P	TJ–3 through TJ–497.
60	P–4 through P–122 and P–124 through P–126.
A60	P–123 and P–127 through P–246.
B60	P–247 through P–596.
65–88	LP–1 through LP–26, LP–28, and LP–30 through LP–47.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible or understandable, this could result in the inability to open the exit doors during an emergency situation.

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

Actions	Compliance	Procedures
Modify the exterior door operating procedures by installing the applicable placard as specified in the service bulletin.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 4, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–798 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–33–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142299–01 and REG–209135–88]

RINS 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a notice of public hearing on proposed rulemaking by cross-reference to temporary regulations relating to certain transfers of property to regulated investment companies and real estate investment trusts.

DATES: The public hearing is being held on May 1, 2002, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by April 10, 2002.

ADDRESSES: The public hearing is being held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Main entrance, located on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:IT&A:RU (REG–142299–01), 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: CC:IT&A:RU (REG–142299–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting them directly to the IRS Internet site at *http://www.irs.gov/tax__regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lisa Fuller, (202) 622–7750; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking by cross-reference to temporary regulations (REG–142299–01) that was published in

the **Federal Register** on Wednesday, January 2, 2002 (67 FR 48).

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 April 10, 2002.

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.

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–894 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking that proposed adding a new procedural rule setting forth settlement procedures for cases that come before the Federal Mine Safety and Health Review Commission. The new procedures were to be instituted as a pilot program for a two-year trial period. Since the issuance of the notice of proposed rulemaking, the Commission has reelvaluated the pilot program and has determined that withdrawal of the notice is appropriate at this time.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006; telephone 202–653–5610 (202–653–2673 for TDD relay). Telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: On November 10, 1999, the Commission issued a notice of proposed rulemaking, which proposed amending its procedural rules, 29 CFR part 2700, by adding a new procedural rule setting forth settlement procedures which were intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission (64 FR 61236–39). The Commission's procedural rules are currently silent regarding procedures to be utilized by administrative law judges (''ALJs'') to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of disputes have been determined informally by the individual ALJ assigned to the case. The proposed rule, 29 CFR 2700.85, was intended to provide a structured and formal system for settlement, which would be initiated by the appointing of a settlement judge on the motion of any party or on the chief administrative law judge's own initiative.

In response to a request by the Department of Labor's Office of the Solicitor, the Commission extended the comment period on the proposed rule for 30 days. 64 FR 68649 (Dec. 8, 1999). The Commission subsequently received comments suggesting, in part, that the settlement procedures should be initiated with the consent of all parties. In considering those comments, the Commission further examined the percentage of cases that settled and the length of time it took to reach settlement under the current informal system. Based upon that examination, the Commission has reconsidered the utility of a formal settlement system at the present time, and shall further evaluate the best means of effectuating the consensual resolution of disputes.

Withdrawal of the notice of proposed rulemaking constitutes only such action, and does not preclude the Commission from issuing another notice in the future, nor does it commit the Commission to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, or the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 29 CFR Part 2700

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published by the Commission in the **Federal Register** on November 10, 1999 (64 FR 61236–39) is withdrawn.

Dated: January 7, 2002.

Theodore F. Verheggen,

Chairman.

[FR Doc. 02–800 Filed 1–11–02; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office

32 CFR Part 326

NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DoD.

ACTION: Proposed rule.

SUMMARY: The National Reconnaissance Office (NRO) is proposing to exempt one Privacy Act system of records. The system of records is QNRO–21, Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes and to protect the privacy of individuals identified in the systems of records. The National Reconnaissance Office is proposing to exempt those records contained in this Privacy Act system of records when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The NRO is also proposing to exempt one Privacy Act system of records. The system of records is QNRO–19, Customer Security Services Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records. The NRO is moving part 326 from subchapter P to subchapter O—Privacy Program.

DATES: Comments must be received by March 15, 2002, to be considered by the agency.

ADDRESSES: National Reconnaissance Office, Information Access and Release

Center, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION:

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

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

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

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

2. Chapter I, subchapters O and P are proposed to be amended by removing 32 CFR part 326 from subchapter P and adding it to subchapter O.

3. Section 326.17 is proposed to be amended by adding paragraphs (h), (i) and (j) to read as follows:

§ 326.17 Exemptions.

* * * * *

(h) NRO–19

(1) *System name:* Customer Security Services Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

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

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

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

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigatory records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

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

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

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the

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

(i) NRO–21

(1) *System name:* Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

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

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

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

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

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

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

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

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

(j) QNRO–4, Freedom of Information Act and Privacy Act Files.

(1) *Exemption:* During the processing of a Freedom of Information Act/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the NRO hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(3) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–679 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AZ, CA, HI, NV, GU–067–NSPS; FRL–7127–3]

Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for Guam and the States of Arizona, California, Hawaii, and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has routinely approved most requests from state and local agencies in Region IX for delegation of New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs). This document is addressing general authorities mentioned in the regulations for NSPS and NESHAPs, proposing to update the delegations tables and clarifying those authorities that are retained by EPA. We are taking comments on this proposal and intend to follow with a final action.

DATES: Any comments must be received by February 13, 2002.

ADDRESSES: Mail comments to Andy Steckel, Chief, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of supporting information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR–4), San Francisco, California, 94105.

Please contact Cynthia G. Allen at (415) 947–4120 to arrange a time if inspection of the supporting information is desired.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen at (415) 947–4120 or Mae Wang at (415) 947–4124, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), 75 Hawthorne Street, San Francisco, California, 94105.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What is the purpose of this document?
Who is authorized to delegate these authorities?
What does delegation accomplish?
What authorities are not delegated by EPA?
Does EPA keep some authority?
Administrative Requirements

What Is the Purpose of This Document?

Through this document, EPA is proposing to accomplish the following objectives:

(1) Update the delegations tables in the Code of Federal Regulations, Title 40 (40 CFR), parts 60 and 61, to provide an accurate listing of the delegated standards; and

(2) Clarify those authorities that are retained by EPA and not granted to state or local agencies as part of delegation. These actions are described below.

Update of Tables in the CFR

Today's action proposes to update the delegation tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables would include the delegations approved in response to recent requests, as well as those previously granted. The proposed tables are shown at the end of this document. EPA is also proposing to update the addresses for state and local agencies within the jurisdiction of EPA Region IX.

Recent requests for delegation that will be incorporated into the updated CFR tables are identified below. Each individual submittal identifies the specific NSPS and NESHAPs for which delegation was requested. Some of these requests have already been approved and simply need to be included in the CFR. For requests listed below that have not yet been approved, EPA will consider these delegation requests as approved on the effective date of the final rulemaking that will follow today's action.

Agency	Date of request
Arizona Department of Environmental Quality	May 29, 1998, and October 6, 1999.
Kern County Air Pollution Control District	February 8, 1995, January 20, 2000, and May 18, 2001.
Lake County Air Quality Management District	February 24, 1997.
Mendocino County Air Quality Management District	May 21, 1999.
Sacramento Metropolitan Air Quality Management District	August 7, 1995, April 24, 1997, and July 7, 1998.
San Diego Air Pollution Control District	June 23 and December 24, 1999.
San Joaquin Valley Unified Air Pollution Control District	May 27, 1999, and June 26, 2000.
Santa Barbara County Air Pollution Control District	August 6, 1996.
Ventura County Air Pollution Control District	February 9, 1995.
Yolo-Solano Air Quality Management District	October 20, 1998.

In the future, EPA Region IX may establish a new procedural option for state and local agencies to receive delegation of 40 CFR part 60 and 61 standards. If an agency has delegation of a standard, then the new procedure may allow that agency to receive delegation of any amendments to that standard as they are adopted by reference. The details of any new procedure will be described in a future rulemaking action before it is implemented. It is being mentioned here for informational purposes only.

Clarification of Non-Delegable Authorities

In February 1999, EPA released a guidance document entitled, ''How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring—NSPS & NESHAPS, (EPA 305–B–99–004).'' In accordance with this guidance, today's action clarifies the NSPS and NESHAP authorities that are not delegated to state and local agencies under Clean Air Act sections 111 and 112. These clarifications will be codified at 40 CFR 60.4(d) and 61.04(c)(9). Today's action also requests that state and local agencies exclude the non-delegable subsections from future delegation requests, and informs the public of our intention to appropriately revise future delegation letter approvals and **Federal Register** announcements.

Who Is Authorized To Delegate These Authorities?

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorize the Administrator to delegate

his or her authority for implementing and enforcing standards in 40 CFR Parts 60 and 61.

What Does Delegation Accomplish?

Delegation grants a state or local agency the primary authority to implement and enforce federal standards. All required notifications and reports should be sent to the delegated state or local agency, as appropriate, with a copy to EPA Region IX. Acceptance of delegation constitutes agreement by the state or local agency to follow 40 CFR parts 60 and 61, and EPA's test methods and continuous monitoring procedures.

What Authorities Are Not Delegated by EPA?

In general, EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant, or alter the stringency of the underlying standards. The following describes in more detail the authorities in 40 CFR Parts 60 and 61 that are retained by EPA.

1. Provisions that address EPA's authority to delegate to states are not being delegated because it is inappropriate to imply that states have authority to delegate to themselves. These provisions include 40 CFR 60.4(b), 61.04(b), and 61.04(c); part 60, subpart B; and part 60, subpart C.

2. Provisions that require federal oversight to ensure national consistency and EPA's ability to enforce the standards are not being delegated. These provisions include 40 CFR 61.05(c) and 61.11.

3. Provisions that grant EPA discretion to approve modifications to test methods or protocols are not being delegated in order to ensure uniformity and technical quality in enforcement of national standards. These provisions include 40 CFR 60.8(b); 60.11(b); 60.13(a),(d)(2), and (g); 60.13(i); 61.13(h)(1)(ii); and 61.14(d) and (g)(1)(ii).

4. Provisions that require rulemaking cannot be delegated because states cannot perform federal rulemaking. These provisions include 40 CFR 60.11(e) and 61.12(d).

5. Provisions that address EPA's obligation to make certain information available to the public does not apply to states under federal law and is not appropriate for delegation. These provisions include 40 CFR 60.9 and 61.16.

6. Appendices to 40 CFR parts 60 and 61 are not performance standards and are not delegable under Clean Air Act Section 111(c)(1) or 112(l)(1). However, all applicable test methods and other requirements in the Appendices must be followed for the delegated subparts.

As additional assurance of national consistency, state and local agencies must send to EPA Region IX Air Division's Enforcement Office Chief a copy of any written decisions made pursuant to the following delegated authorities:

- Applicability determinations that state a source is not subject to a rule or requirement;
- Approvals or determination of construction, reconstruction or modification;
- Minor or intermediate site-specific changes to test methods or monitoring requirements; or
- Site-specific changes or waivers of performance testing requirements.

For decisions that require EPA review and approval (for example, major changes to monitoring requirements), EPA intends to make determinations in a timely manner.

In some cases, the standards themselves specify that specific provisions cannot be delegated. State and local agencies should review each individual standard for this information.

Does EPA Keep Some Authority?

EPA retains independent authority to enforce the standards and regulations of 40 CFR parts 60 and 61.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have 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 would merely approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation requests, 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 delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for delegation, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action 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 proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 60 and 61

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 101, 110, 112, and 301

of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: December 18, 2001.

Jack P. Broadbent,

Director, Air Division, Region IX.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

2. Section 60.4 is amended:

a. In paragraph (a) by revising the address for ''Region IX''.

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By revising paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (d).

The revisions and additions read as follows:

§ 60.4 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County Air Pollution Control District (Southeast Desert), 2700 M Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, DeWitt Center, 11464 ''B'' Avenue, Auburn, CA 95603–2603

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117–3027

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(M) Hawaii:

Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI 96814

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

Note: Tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(d) The following tables list the specific Part 60 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 60.4(b), 60.8(b), 60.9, 60.11(b), 60.11(e), 60.13(a), 60.13(d)(2), 60.13(g), 60.13(i).

(1) Arizona. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency		Pima County	Pinal County
		Arizona DEQ	Maricopa County		
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X		X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial Steam Generating Units	X	X	X	X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors	X	X		X
Eb	Portland Cement Plants	X			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X	X	X	X
G	Nitric Acid Plants	X	X	X	X
H	Sulfuric Acid Plants	X	X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X		X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	X	X	X
Q	Primary Zinc Smelters	X	X	X	X
R	Primary Lead Smelters	X	X	X	X
S	Primary Aluminum Reduction Plants	X	X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X	X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X	X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X	X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X	X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y	Coal Preparation Plants	X	X	X	X
Z	Ferroalloy Production Facilities	X	X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB	Kraft pulp Mills	X	X	X	X
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants	X	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X	X
NN	Phosphate Rock Plants	X	X	X	X
PP	Ammonium Sulfate Manufacture	X	X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X	X	X	X
SS	Industrial Surface Coating: Large Appliances	X	X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

	Subpart	Air pollution control agency		Pima County	Pinal County
		Arizona DEQ	Maricopa County		
TT	Metal Coil Surface Coating	X	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X	X	X	X
WW	Beverage Can Surface Coating Industry	X	X	X	X
XX	Bulk Gasoline Terminals	X	X	X	X
AAA	New Residential Wool Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	X	X	X
HHH	Synthetic Fiber Production Facilities	X	X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X	X	X
JJJ	Petroleum Dry Cleaners	X	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X	X		X
MMM	(Reserved)	X	X	X	X
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X	X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities	X	X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU	Calciners and Dryers in Mineral Industries	X			
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X			

(2) California. The following tables identify delegations for each of the local air pollution control agencies of California.

(i) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
A	General Provisions			X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.			X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators			X	
Ea	Municipal Waste Combustors			X	
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants			X	
G	Nitric Acid Plants			X	
H	Sulfuric Acid Plants			X	
I	Hot Mix Asphalt Facilities			X	
J	Petroleum Refineries			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.			X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters			X	
M	Secondary Brass and Bronze Production Plants			X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants			X	
P	Primary Copper Smelters			X	
Q	Primary Zinc Smelters			X	
R	Primary Lead Smelters			X	
S	Primary Aluminum Reduction Plants			X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants			X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants			X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants			X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants			X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.			X	
Y	Coal Preparation Plants			X	
Z	Ferroalloy Production Facilities			X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.			X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills			X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators			X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants			X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters			X	
BBB	Rubber Tire Manufacturing Industry			X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.			X	
JJJ	Petroleum Dry Cleaners			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions				
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities			X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.			X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills.				

(ii) [Reserved]

(iii) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions		X		X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.		X		X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.		X		X
Db	Industrial-Commercial-Institutional Steam Generating Units		X		X
Dc	Small Industrial Steam Generating Units		X		X
E	Incinerators		X		X
Ea	Municipal Waste Combustors		X		
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants		X		X
G	Nitric Acid Plants		X		X
H	Sulfuric Acid Plants		X		
I	Hot Mix Asphalt Facilities		X		X
J	Petroleum Refineries		X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X		X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X		X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X		X
L	Secondary Lead Smelters		X		X
M	Secondary Brass and Bronze Production Plants		X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X		X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X		X
O	Sewage Treatment Plants		X		X
P	Primary Copper Smelters		X		X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
Q	Primary Zinc Smelters		X		X
R	Primary Lead Smelters		X		X
S	Primary Aluminum Reduction Plants		X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X		X
Y	Coal Preparation Plants		X		X
Z	Ferroalloy Production Facilities		X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X		X
BB	Kraft pulp Mills		X		X
CC	Glass Manufacturing Plants		X		X
DD	Grain Elevators		X		X
EE	Surface Coating of Metal Furniture		X		X
FF	(Reserved)				
GG	Stationary Gas Turbines		X		X
HH	Lime Manufacturing Plants		X		X
KK	Lead-Acid Battery Manufacturing Plants		X		X
LL	Metallic Mineral Processing Plants		X		X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X		X
NN	Phosphate Rock Plants		X		X
PP	Ammonium Sulfate Manufacture		X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X		X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X		X
SS	Industrial Surface Coating: Large Appliances		X		X
TT	Metal Coil Surface Coating		X		X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X		X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X		X
WW	Beverage Can Surface Coating Industry		X		X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X		X
BBB	Rubber Tire Manufacturing Industry		X		X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X		X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X		X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X		X
HHH	Synthetic Fiber Production Facilities		X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X		X
JJJ	Petroleum Dry Cleaners		X		X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X		X
LLL	Onshore Natural Gas Processing: SO2 Emissions				X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X		X
OOO	Nonmetallic Mineral Processing Plants		X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X		X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.				X
SSS	Magnetic Tape Coating Facilities		X		X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X		X
UUU	Calciners and Dryers in Mineral Industries		X		X
VVV	Polymeric Coating of Supporting Substrates Facilities		X		X
WWW	Municipal Solid Waste Landfills				X

(iv) Delegations for Lake County Air Quality Management District, Lassen County Air Pollution Control District, Mariposa County Air Pollution Control District, and Mendocino County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Lake County AQMD	Lassen County APCD	Mariposa County AQMD	Mendocino County AQMD
A	General Provisions	X			X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X			X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X			X
Db	Industrial-Commercial-Institutional Steam Generating Units	X			
Dc	Small Industrial Steam Generating Units	X			X
E	Incinerators	X			X
Ea	Municipal Waste Combustors	X			X
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X			X
G	Nitric Acid Plants	X			X
H	Sulfuric Acid Plants	X			X
I	Hot Mix Asphalt Facilities	X			X
J	Petroleum Refineries	X			X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X			X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X			X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X			X
L	Secondary Lead Smelters	X			X
M	Secondary Brass and Bronze Production Plants	X			X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X			X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X			X
O	Sewage Treatment Plants	X			X
P	Primary Copper Smelters	X			X
Q	Primary Zinc Smelters	X			X
R	Primary Lead Smelters	X			X
S	Primary Aluminum Reduction Plants	X			X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X			X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X			X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X			X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X			
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X			X
Y	Coal Preparation Plants	X			X
Z	Ferroalloy Production Facilities	X			X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X			X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X			X
BB	Kraft pulp Mills	X			X
CC	Glass Manufacturing Plants	X			X
DD	Grain Elevators	X			X
EE	Surface Coating of Metal Furniture	X			X
FF	(Reserved)				
GG	Stationary Gas Turbines	X			X
HH	Lime Manufacturing Plants	X			X
KK	Lead-Acid Battery Manufacturing Plants	X			X
LL	Metallic Mineral Processing Plants	X			X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X			X
NN	Phosphate Rock Plants	X			X
PP	Ammonium Sulfate Manufacture	X			X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Lake County AQMD	Lassen County APCD	Mariposa County AQMD	Mendocino County AQMD
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X			X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X			X
SS	Industrial Surface Coating: Large Appliances	X			X
TT	Metal Coil Surface Coating	X			X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X			X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X			X
WW	Beverage Can Surface Coating Industry	X			X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X			X
BBB	Rubber Tire Manufacturing Industry	X			X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X			X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X			X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X			X
HHH	Synthetic Fiber Production Facilities	X			X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X			X
JJJ	Petroleum Dry Cleaners	X			X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X			X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X			X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations	X			X
OOO	Nonmetallic Mineral Processing Plants	X			X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X			X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X			X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	X			
SSS	Magnetic Tape Coating Facilities	X			X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X			X
UUU	Calciners and Dryers in Mineral Industries	X			X
VVV	Polymeric Coating of Supporting Substrates Facilities	X			X
WWW	Municipal Solid Waste Landfills	X			

(v) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A	General Provisions	X		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X		X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X		X	X
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators	X		X	X
Ea	Municipal Waste Combustors				
Eb	Portland Cement Plants				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X		X	X
G	Nitric Acid Plants	X		X	X
H	Sulfuric Acid Plants	X		X	X
I	Hot Mix Asphalt Facilities	X		X	X
J	Petroleum Refineries	X		X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X		X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X		X	X
L	Secondary Lead Smelters	X		X	X
M	Secondary Brass and Bronze Production Plants	X		X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		X	X
O	Sewage Treatment Plants	X		X	X
P	Primary Copper Smelters	X		X	X
Q	Primary Zinc Smelters	X		X	X
R	Primary Lead Smelters	X		X	X
S	Primary Aluminum Reduction Plants	X		X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X		X	X
Y	Coal Preparation Plants	X		X	X
Z	Ferroalloy Production Facilities	X		X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		X	X
BB	Kraft pulp Mills	X		X	X
CC	Glass Manufacturing Plants	X		X	X
DD	Grain Elevators	X		X	X
EE	Surface Coating of Metal Furniture	X		X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X		X	X
HH	Lime Manufacturing Plants	X		X	X
KK	Lead-Acid Battery Manufacturing Plants	X		X	X
LL	Metallic Mineral Processing Plants	X		X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X		X	X
NN	Phosphate Rock Plants	X		X	X
PP	Ammonium Sulfate Manufacture	X		X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X		X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X	X
SS	Industrial Surface Coating: Large Appliances	X		X	X
TT	Metal Coil Surface Coating	X		X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X		X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X		X	X
WW	Beverage Can Surface Coating Industry	X		X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X		X	X
BBB	Rubber Tire Manufacturing Industry	X		X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X		X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X	X
HHH	Synthetic Fiber Production Facilities	X		X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes				
JJJ	Petroleum Dry Cleaners	X		X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X		X	X
LLL	Onshore Natural Gas Processing: SO2 Emissions	X		X	X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X		X	
OOO	Nonmetallic Mineral Processing Plants	X		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X		X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities	X		X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X		X	X
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	X
WWW	Municipal Solid Waste Landfills				

(vi) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
A	General Provisions		X		X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.				X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.				X
Db	Industrial-Commercial-Institutional Steam Generating Units				X
Dc	Small Industrial Steam Generating Units				X
E	Incinerators				X
Ea	Municipal Waste Combustors				X
Eb	Portland Cement Plants				X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				X
F	Portland Cement Plants				X
G	Nitric Acid Plants				X
H	Sulfuric Acid Plants				X
I	Hot Mix Asphalt Facilities				X
J	Petroleum Refineries				X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.				X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.				X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleumn Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.				X
L	Secondary Lead Smelters				X
M	Secondary Brass and Bronze Production Plants				X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.				X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.				
O	Sewage Treatment Plants				X
P	Primary Copper Smelters				X
Q	Primary Zinc Smelters				X
R	Primary Lead Smelters				X
S	Primary Aluminum Reduction Plants				X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants				X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants				X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants				X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants				X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.				X
Y	Coal Preparation Plants				X
Z	Ferroalloy Production Facilities				X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.				X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.				X
BB	Kraft Pulp Mills				X
CC	Glass Manufacturing Plants				X
DD	Grain Elevators				X
EE	Surface Coating of Metal Furniture				X
FF	(Reserved)				
GG	Stationary Glass Turbines				X
HH	Lime Manufacturing Plants				X
KK	Lead-Acid Battery Manufacturing Plants				X
LL	Metallic Mineral Processing Plants				X
MM	Automobile and Light Duty Trucks Surface Coating Operations				X
NN	Phosphate Rock Plants				X
PP	Ammonium Sulfate Manufacture				X
QQ	Graphic Arts Industry: Publication Rotogravure Printing				X
RR	Pressure Sensitive Tape and Label Surface Coating Operations				X
SS	Industrial Surface Coating: Large Appliances				X
TT	Metal Coil Surface Coating				X
UU	Asphalt Processing and Asphalt Roofing Manufacture				X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.				X
WW	Beverage Can Surface Coating Industry				X
XX	Bulk Gasoline Terminals.				
AAA	New Residential Wood Heaters				X
BBB	Rubber Tire Manufacturing Industry				X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.				X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing				X
GGG	Equipment Leaks of VOC in Petroleum Refineries				X
HHH	Synthetic Fiber Production Facilities				X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.				X
JJJ	Petroleum Dry Cleaners				X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.				X
LLL	Onshore Natural Gas Processing: SO_2 Emissions				X
MMM	(Reserved)				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.				X
OOO	Nonmetallic Mineral Processing Plants				X
PPP	Wood Fiberglass Insulation Manufacturing Plants				X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems				X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.				X
SSS	Magnetic Tape Coating Facilities				X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.				X
UUU	Calciners and Dryers in Mineral Industries				X
VVV	Polymeric Coating of Supporting Substrates Facilities				X
WWW	Municipal Solid Waste Landfills				X

(vii) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.		X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.		X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X	X
Dc	Small Industrial Steam Generating Units	X	X		X
E	Incinerators		X	X	X
Ea	Municipal Waste Combustors		X	X	X
Eb	Portland Cement Plants			X	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants		X	X	X
G	Nitric Acid Plants		X	X	X
H	Sulfuric Acid Plants		X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries		X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters		X	X	X
M	Secondary Brass and Bronze Production Plants		X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	X	X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters		X	X	X
Q	Primary Zinc Smelters		X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
R	Primary Lead Smelters		X	X	X
S	Primary Aluminum Reduction Plants		X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X	X	X
Y	Coal Preparation Plants		X	X	X
Z	Ferroalloy Production Facilities		X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	X	X
BB	Kraft pulp Mills		X	X	X
CC	Glass Manufacturing Plants		X	X	X
DD	Grain Elevators		X	X	X
EE	Surface Coating of Metal Furniture		X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines		X	X	X
HH	Lime Manufacturing Plants		X	X	X
KK	Lead-Acid Battery Manufacturing Plants		X	X	X
LL	Metallic Mineral Processing Plants		X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	X	X
NN	Phosphate Rock Plants		X	X	X
PP	Ammonium Sulfate Manufacture		X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	X	X
SS	Industrial Surface Coating: Large Appliances		X	X	X
TT	Metal Coil Surface Coating		X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X	X	X
WW	Beverage Can Surface Coating Industry		X	X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X	X	X
BBB	Rubber Tire Manufacturing Industry		X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	X	X
HHH	Synthetic Fiber Production Facilities		X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	X	X
JJJ	Petroleum Dry Cleaners		X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions		X	X	X
MMM	(Reserved).				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	X	X
SSS	Magnetic Tape Coating Facilities		X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	X
VVV	Polymeric Coating of Supporting Substrates Facilities		X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	X

(viii) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions	X	X	X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.			X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators			X	
Ea	Municipal Waste Combustors			X	
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants			X	
G	Nitric Acid Plants			X	
H	Sulfuric Acid Plants			X	
I	Hot Mix Asphalt Facilities			X	
J	Petroleum Refineries			X	
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.			X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters			X	
M	Secondary Brass and Bronze Production Plants			X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants			X	
P	Primary Copper Smelters			X	
Q	Primary Zinc Smelters			X	
R	Primary Lead Smelters			X	
S	Primary Aluminum Reduction Plants			X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants			X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants			X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants			X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants			X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.			X	
Y	Coal Preparation Plants			X	
Z	Ferroalloy Production Facilities			X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.			X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills			X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators			X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants			X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters			X	
BBB	Rubber Tire Manufacturing Industry			X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.			X	
JJJ	Petroleum Dry Cleaners			X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions			X	
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities			X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.			X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills				

(ix) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978		X	
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X
Dc	Small Industrial Steam Generating Units		X	
E	Incinerators		X	
Ea	Municipal Waste Combustors		X	
Eb	Portland Cement Plants			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996			
F	Portland Cement Plants		X	
G	Nitric Acid Plants		X	
H	Sulfuric Acid Plants		X	
I	Hot Mix Asphalt Facilities		X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
J	Petroleum Refineries		X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X	
L	Secondary Lead Smelters		X	
M	Secondary Brass and Bronze Production Plants		X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	
O	Sewage Treatment Plants		X	
P	Primary Copper Smelters		X	
Q	Primary Zinc Smelters		X	
R	Primary Lead Smelters		X	
S	Primary Aluminum Reduction Plants		X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities		X	
Y	Coal Preparation Plants		X	
Z	Ferroalloy Production Facilities		X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	
BB	Kraft pulp Mills		X	
CC	Glass Manufacturing Plants		X	
DD	Grain Elevators		X	
EE	Surface Coating of Metal Furniture		X	
FF	(Reserved)			
GG	Stationary Gas Turbines		X	
HH	Lime Manufacturing Plants		X	
KK	Lead-Acid Battery Manufacturing Plants		X	
LL	Metallic Mineral Processing Plants		X	
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	
NN	Phosphate Rock Plants		X	
PP	Ammonium Sulfate Manufacture		X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	
SS	Industrial Surface Coating: Large Appliances		X	
TT	Metal Coil Surface Coating		X	
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry		X	
WW	Beverage Can Surface Coating Industry		X	
XX	Bulk Gasoline Terminals			
AAA	New Residential Wool Heaters		X	
BBB	Rubber Tire Manufacturing Industry		X	
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing		X	
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	
HHH	Synthetic Fiber Production Facilities		X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	
JJJ	Petroleum Dry Cleaners		X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants		X	
LLL	Onshore Natural Gas Processing: SO2 Emissions		X	
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
OOO	Nonmetallic Mineral Processing Plants		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	
SSS	Magnetic Tape Coating Facilities		X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines		X	
UUU	Calciners and Dryers in Mineral Industries		X	
VVV	Polymeric Coating of Supporting Substrates Facilities		X	
WWW	Municipal Solid Waste Landfills		X	X

(3) Hawaii. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X
Dc	Small Industrial Steam Generating Units	X
E	Incinerators	X
Ea	Municipal Waste Combustors	X
Eb	Portland Cement Plants	X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996	
F	Portland Cement Plants	X
G	Nitric Acid Plants	
H	Sulfuric Acid Plants	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X
L	Secondary Lead Smelters	
M	Secondary Brass and Bronze Production Plants	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983	
O	Sewage Treatment Plants	X
P	Primary Copper Smelters	
Q	Primary Zinc Smelters	
R	Primary Lead Smelters	
S	Primary Aluminum Reduction Plants	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	
Y	Coal Preparation Plants	X
Z	Ferroalloy Production Facilities	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983	X
BB	Kraft pulp Mills	
CC	Glass Manufacturing Plants	
DD	Grain Elevators	
EE	Surface Coating of Metal Furniture	
FF	(Reserved)	
GG	Stationary Gas Turbines	X
HH	Lime Manufacturing Plants	
KK	Lead-Acid Battery Manufacturing Plants	
LL	Metallic Mineral Processing Plants	
MM	Automobile and Light Duty Trucks Surface Coating Operations	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
NN	Phosphate Rock Plants	
PP	Ammonium Sulfate Manufacture	
QQ	Graphic Arts Industry: Publication Rotogravure Printing	
RR	Pressure Sensitive Tape and Label Surface Coating Operations	
SS	Industrial Surface Coating: Large Appliances	
TT	Metal Coil Surface Coating	
UU	Asphalt Processing and Asphalt Roofing Manufacture	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X
WW	Beverage Can Surface Coating Industry	X
XX	Bulk Gasoline Terminals	X
AAA	New Residential Wool Heaters	
BBB	Rubber Tire Manufacturing Industry	
CCC	(Reserved)	
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry	
EEE	(Reserved)	
FFF	Flexible Vinyl and Urethane Coating and Printing	
GGG	Equipment Leaks of VOC in Petroleum Refineries	X
HHH	Synthetic Fiber Production Facilities	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes	
JJJ	Petroleum Dry Cleaners	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	
LLL	Onshore Natural Gas Processing: SO_2 Emissions	
MMM	(Reserved)	
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X
OOO	Nonmetallic Mineral Processing Plants	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes	
SSS	Magnetic Tape Coating Facilities	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	
UUU	Calciners and Dryers in Mineral Industries	X
VVV	Polymeric Coating of Supporting Substrates Facilities	X
WWW	Municipal Solid Waste Landfills	

(4) Nevada. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
A	General Provisions	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X		
Db	Industrial-Commercial-Institutional Steam Generating Units			
Dc	Small Industrial Steam Generating Units			
E	Incinerators	X	X	X
Ea	Municipal Waste Combustors			
Eb	Portland Cement Plants			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996			
F	Portland Cement Plants	X	X	X
G	Nitric Acid Plants	X		X
H	Sulfuric Acid Plants	X		X
I	Hot Mix Asphalt Facilities	X	X	X
J	Petroleum Refineries	X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X		
L	Secondary Lead Smelters	X	X	X
M	Secondary Brass and Bronze Production Plants	X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		
O	Sewage Treatment Plants	X	X	X
P	Primary Copper Smelters	X	X	X
Q	Primary Zinc Smelters	X	X	X
R	Primary Lead Smelters	X	X	X
S	Primary Aluminum Reduction Plants	X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	X		X
Y	Coal Preparation Plants	X	X	X
Z	Ferroalloy Production Facilities	X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		
BB	Kraft pulp Mills	X		X
CC	Glass Manufacturing Plants	X		X
DD	Grain Elevators	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X
FF	(Reserved)			
GG	Stationary Gas Turbines	X	X	X
HH	Lime Manufacturing Plants	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X
NN	Phosphate Rock Plants	X	X	X
PP	Ammonium Sulfate Manufacture	X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X
SS	Industrial Surface Coating: Large Appliances	X	X	X
TT	Metal Coil Surface Coating	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X	X	X
WW	Beverage Can Surface Coating Industry	X		X
XX	Bulk Gasoline Terminals	X		X
AAA	New Residential Wool Heaters			
BBB	Rubber Tire Manufacturing Industry			
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry			
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X
HHH	Synthetic Fiber Production Facilities	X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes			
JJJ	Petroleum Dry Cleaners	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	X		
LLL	Onshore Natural Gas Processing: SO2 Emissions	X		
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations			
OOO	Nonmetallic Mineral Processing Plants	X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes			
SSS	Magnetic Tape Coating Facilities			
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines			
UUU	Calciners and Dryers in Mineral Industries			
VVV	Polymeric Coating of Supporting Substrates Facilities			
WWW	Municipal Solid Waste Landfills			

(5) Guam. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GUAM

	Subpart	Guam
A	General Provisions	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	
Db	Industrial-Commercial-Institutional Steam Generating Units.	
Dc	Small Industrial Steam Generating Units.	
E	Incinerators.	
Ea	Municipal Waste Combustors.	
Eb	Portland Cement Plants.	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	
F	Portland Cement Plants.	
G	Nitric Acid Plants.	
H	Sulfuric Acid Plants.	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X

PART 61 —[AMENDED]

1. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

2. Section 61.04 is amended:

a. In paragraph (a) by revising the address for ''Region IX''.

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By adding paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (c)(9).

The revisions and additions read as follows:

§ 61.04 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94l09

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County Air Pollution Control District (Southeast Desert), 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, DeWitt Center, 11464 ''B'' Avenue, Auburn, CA 95603–2603

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian, Drive, B–23, Goleta, CA 93117–3027

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(M) Hawaii:

Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI, 96814

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(c) * * *

(9) The following tables list the specific Part 61 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 61.04(b), 61.04(c), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16.

(i) Arizona. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR PART 61 STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency			
		Arizona DEO	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium	X	X	X	X
D	Beryllium Rocket Motor Firing	X	X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride	X	X	X	X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X	X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants				
L	Benzene Emissions from Coke By-Product Recovery Plants	X	X	X	X
M	Asbestos	X	X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X	X		X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X	X		X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X	X		
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)	X	X	X	X
W	Radon Emissions From Operating Mill Tailings				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels	X	X	X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations	X	X	X	X
CC–EE	(Reserved).				
FF	Benzene Waste Operations	X	X	X	X

(ii) California. The following tables identify delegations for each of the local air pollution control agencies of California.

(A) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County AQMD
A	General Provisions.				
B	Radon Emissions From Underground Uranium.				
C	Beryllium.				
D	Beryllium Rocket Motor Firing.				
E	Mercury.				
F	Vinyl Chloride.				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants			X	
M	Asbestos			X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.				
O	Inorganic Arsenic Emissions From Primary Copper Smelters.				
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources).				
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(B) [Reserved]

(C) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions				X
B	Radon Emissions From Underground Uranium				
C	Beryllium				X
D	Beryllium Rocket Motor Firing				X
E	Mercury				X
F	Vinyl Chloride				X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene				X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions From Coke By-Product Recovery Plants.				X
M	Asbestos				X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants				X
O	Inorganic Arsenic Emissions From Primary Copper Smelters				X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				X
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
S	(Reserved)				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)				X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels				X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations				X
CC–EE	(Reserved).				
FF	Benzene Waste Operations				X

(D) [Reserved]

(E) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A	General Provisions	X		X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium	X		X	X
D	Beryllium Rocket Motor Firing	X		X	X
E	Mercury	X		X	X
F	Vinyl Chloride	X	X	X	
G	(Reserved)				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Rugulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X		X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions From Coke By-Product Recovery Plants			X	X
M	Asbestos	X		X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants			X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X		X	
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)	X		X	X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(F) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metro AQMD
A	General Provisions.				
B	Radon Emissions From Underground Uranium.				
C	Beryllium.				
D	Beryllium Rocket Motor Firing.				
E	Mercury.				
F	Vinyl Chloride.				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants.				
M	Asbestos				
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.				
O	Inorganic Arsenic Emissions From Primary Copper Smelters.				
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources).				
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels.				
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.				
CC–EE	(Reserved).				
FF	Benzene Waste Operations.				

(G) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium		X	X	X
D	Beryllium Rocket Motor Firing		X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride		X	X	X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants.			X	X
M	Asbestos		X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	X	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters		X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	X	X
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)		X	X	X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations			X	X
CC–EE	(Reserved).				
FF	Benzene Waste Operations		X	X	X

(H) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions			X	
B	Radon Emissions From Underground Uranium.				
C	Beryllium			X	
D	Beryllium Rocket Motor Firing			X	
E	Mercury			X	
F	Vinyl Chloride			X	
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene			X	
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants			X	
M	Asbestos			X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants			X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters			X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.			X	
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)			X	
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(I) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	
B	Radon Emissions From Underground Uranium.			
C	Beryllium		X	
D	Beryllium Rocket Motor Firing		X	
E	Mercury		X	
F	Vinyl Chloride		X	
G	(Reserved).			
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities			
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.			
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	
K	Radionuclide Emissions From Elemental Phosphorus Plants.			
L	Benzene Emissions from Coke By-Product Recovery Plants		X	
M	Asbestos		X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	
Q	Radon Emissions From Department of Energy Facilities.			
R	Radon Emissions From Phosphogypsum Stacks.			
S	(Reserved).			
T	Radon Emissions From the Disposal of Uranium Mill Tailings.			
U	(Reserved).			
V	Equipment Leaks (Fugitive Emission Sources)		X	
W	Radon Emissions From Operating Mill Tailings.			
X	(Reserved).			
Y	Benzene Emissions From Benzene Storage Vessels.		X	
Z–AA	(Reserved).			
BB	Benzene Emissions From Benzene Transfer Operations.		X	
CC–EE	(Reserved).			
FF	Benzene Waste Operations.		X	

(iii) Hawaii. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X
B	Radon Emissions From Underground Uranium.	
C	Beryllium.	
D	Beryllium Rocket Motor Firing.	
E	Mercury	X
F	Vinyl Chloride.	
G	(Reserved).	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.	
L	Benzene Emissions from Coke By-Product Recovery Plants.	
M	Asbestos.	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.	
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	
Q	Radon Emissions From Department of Energy Facilities.	
R	Radon Emissions From Phosphogypsum Stacks.	
S	(Reserved).	
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	
U	(Reserved).	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings.	
X	(Reserved).	
Y	Benzene Emissions From Benzene Storage Vessels.	
Z–AA	(Reserved).	
BB	Benzene Emissions From Benzene Transfer Operations	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
CC–EE	(Reserved).	
FF	Benzene Waste Operations	X

* * * * *

[FR Doc. 02–702 Filed 1–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–3021, MM Docket No. 01–349, RM–10350]

Radio Broadcasting Services; Boscobel, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Starboard Broadcasting, Inc. proposing the allotment of Channel 244C3 at Boscobel, Wisconsin, as the community's first local transmission service. The coordinates for Channel 244C3 at Boscobel are 43–08–04 and 90–42–19. The channel can be allotted to Boscobel without a site restriction.

DATES: Comments must be filed on or before February 19, 2002, and reply comments on or before March 6, 2002.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Stephen Gajdosik, Vice President, Starboard Broadcasting, Inc., 2470 Crooks Avenue, Kaukauna, Wisconsin 54130.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–349, adopted December 19, 2001, and released December 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint @aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Radio 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 Wisconsin, is amended by adding Boscobel, Channel 244C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–786 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98–204, FCC 01–363]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The document proposes to retain the Commission's ban on discrimination and to require broadcasters and cable entities to maintain an EEO program that would achieve broad and inclusive outreach in recruitment to ensure a fair opportunity for all job seekers; and provide administrative relief to small entities. The intended effect is to invite comments on all aspects of the Commission's proposals.

DATES: Comments are due March 15, 2002 and reply comments are due April 15, 2002. Written comments by the public on the proposed information collections are due March 15, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington DC 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: EEO Staff, Mass Media Bureau, (202) 418–1450. For additional information concerning the information collection(s), contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Notice of Proposed Rule Making (Second NPRM) in MM Docket No. 98–204, FCC 01–363. This Second NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Synopsis of Second Notice of Proposed Rule Making

1. This Second NPRM adopts new broadcast and cable EEO rules and policies consistent with the decision of the Court in *MD/DC/DE Broadcasters Association* v. *FCC,* 236 F.3d 13, rehearing denied, 253 F.3d 732 (D.C. Cir. 2001), petition for cert. filed, *MMTC* v. *MD/DC/DE Broadcasters Association,* No. 01–639 (October 17, 2001) (Association), which held that the EEO program requirements of the Commission's broadcast EEO rule were, in part, unconstitutional and therefore vacated the entire rule because the Court found that portions of the rule that it did not find unconstitutional could not be severed from the unconstitutional portion. The broadcast EEO rule was adopted by the *Report and Order* in MM Docket Nos. 98–204 and 96–16, 15 FCC Rcd 2329 (2000) (*Report and Order*), recon. denied, 15 FCC Rcd 22548 (2000), 47 CFR 73.2080. The *Report and Order* also adopted EEO rules for cable entities.

2. The program initiatives of the EEO rule adopted by the Report and Order required that broadcasters widely disseminate information about job openings to ensure that all qualified applicants, including minorities and women, would be able to compete for jobs in the broadcast industry. The EEO rule did not specify the number or type of recruitment sources to be utilized in recruitment efforts. Rather, the rule afforded broadcasters two options from which they could choose, referred to as Option A and Option B.

3. Option A required broadcasters to comply with two supplemental recruitment measures, in addition to the general requirement to recruit for all vacancies so as to achieve broad outreach. First, they were required to provide notice of openings to recruitment organizations that requested such notice. Second, they were required to engage in a certain number of outreach efforts beyond the traditional recruitment that occurs in response to individual vacancies, such as job fairs, internship programs, training programs, mentoring programs, and interaction with educational and community groups. Broadcasters who chose Option A were required to retain records sufficient to document their recruitment efforts and to document that they performed the supplemental recruitment measures. In addition, in order to permit an assessment of their program, they were required to track the recruitment sources of their interviewees and hires.

4. Option B also included the general requirement to recruit for all vacancies but afforded broadcasters the opportunity to design their own program for achieving broad outreach without utilizing the supplemental recruitment measures specified under Option A. Broadcasters electing Option B were required to maintain records documenting their recruitment efforts. In order to permit a meaningful assessment of the success of the program in achieving broad outreach, broadcasters using Option B were required to track the recruitment source, racial/ethnic status, and gender of applicants.

5. The Court in *Association* found that Option B violated the constitutional requirement of equal protection because it created pressure on broadcasters to make greater efforts to recruit for minorities with the result that some nonminority prospective applicants would be deprived of notice. The Court did not find any constitutional infirmity with Option A. However, it concluded that it was unable to sever the invalid Option B from the EEO rule, leaving a rule based only on Option A. Nonetheless, the Court indicated that the Commission could conduct a renewed rulemaking. Thus, this Second NPRM develops EEO requirements for broadcasters and cable entities that are consistent with the Court's decision in *Association* by requesting comments on proposals that generally follow those previously adopted under the former Option A.

Paperwork Reduction Act

This Second NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Second NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Second NPRM; OMB notification of action is due March 15, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Second NPRM—Review of the Commission's Broadcast and Cable EEO Rules and Policies.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 251—16,425.

Estimated Time Per Response: 10 minutes—42.0 hours.

Total Annual Burden: 394—528,238.

Total Annual Costs: $0—$100,000.

Needs and Uses: This Second NPRM seeks comments on a new broadcast EEO rule and policy consistent with the decision in *Association* wherein the court found unconstitutional one of two options for achieving broad outreach. Adoption of any revised EEO rule or policy would likely require changes to the following information collections: 3060–0095 Annual Employment Report—Cable Television (FCC 395–A); 3060–0113 Broadcast EEO Program Report (FCC 396); 3060–0120 Broadcast EEO Model Program Report (FCC 396–A); 3060–0212 § 73.2080 EEO Program; 3060–0349 Cable EEO Requirements (§§ 76.73, 76.75, 73.79, 76.1702; 3060–0390 Broadcast Station Annual Employment Report (FCC 395–B); 3060–0574 MVPD Annual Employment Report (FCC 395–M); and 3060–0922 Broadcast Statement of Compliance (FCC 397). Any revisions to these collections would be subject to OMB review and approval at the final rule stage.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second NPRM. *See* 5 U.S.C. 603. [The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second NPRM. The Commission will send a copy of the Second NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Second NPRM and IRFA (or summaries thereof) will be

published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rule Changes

This Second NPRM requests comments concerning a new broadcast equal employment opportunity rule and policies consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Association.* The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *Report and Order*, 47 CFR 73.2080. The Court found the option invalid because nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the EEO rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire rule. The outreach provisions adopted by the *Report and Order* were designed to ensure that all persons have the opportunity to participate in the broadcasting industry by requiring that broadcasters engage in broad and inclusive outreach in connection with their hiring efforts.

Because the Commission continues to believe in the importance of achieving broad and inclusive outreach and that this can be achieved in a manner consistent with the Court's decision, we are issuing this Second NPRM for the purpose of developing EEO rules to replace those found unlawful by the Court. In addition to considering a new broadcast EEO rule, we will also consider new rules applicable to cable entities, including multichannel video program distributors (MVPDs). Thus, in the *Report and Order,* we adopted EEO requirements applicable to cable entities which were generally the same as the requirements applicable to broadcasters, except where necessary to comply with statutory requirements applicable only to cable entities. The Court in *Association* did not address our requirements applicable to cable entities. However, it remains our belief that the EEO requirements for cable entities should, to the extent possible, conform to the requirements applicable to broadcasters. The Court in *Association* did not address those aspects of our broadcast and cable EEO rules that prohibit discrimination in hiring practices and we do not believe the Court intended to invalidate such requirements. The Second NPRM accordingly proposes to readopt our antidiscrimination requirements.

Hence, the Second NPRM seeks comment on proposed EEO rules and policies for broadcast and cable entities, including multichannel video programming distributors. The rules are designed to replace existing requirements that were found to be unconstitutional in part by the Court in *Association*, or are, in light of the Court's decision, constitutionally suspect in part. Specifically, we request comment on our proposal to retain the anti-discrimination prong of our EEO rules. In addition, we request comment on proposals to require broadcasters and cable entities to establish and maintain an EEO program that would emphasize recruitment outreach; discourage entities from preferring members of any racial, ethnic, or gender group in hiring or recruitment practices; and provide administrative relief to small entities that meet proposed qualifying factors.

B. Legal Basis

Authority for the actions proposed in this Second NPRM may be found in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

C. Recording, Recordkeeping, and Other Compliance Requirements

As noted, the purpose of this rule making is to replace our prior EEO rule that was found to be unconstitutional in part by eliminating that portion determined to be unconstitutional. Hence, this Second NPRM anticipates that any recording, recordkeeping and compliance requirements of the new rule will not exceed those provided for in the former rule.

Specifically, the Second NPRM proposes that some EEO materials be kept in the public inspection file, that all broadcasters and cable entities adhere to the EEO rules' general anti-discrimination provisions, and that broadcasters and cable entities widely disseminate information concerning job vacancies.

The Second NPRM also proposes that broadcasters and cable entities undertake two supplemental recruitment measures described herein. As proposed, the first supplemental recruitment measure would require broadcasters and cable entities to provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of a station's staff, the second supplemental recruitment measure would require broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues (including conventions, career days, workshops, and similar activities); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; establishment of a mentoring program for station personnel; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting; listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. Cable employment units with more than ten full-time employees would engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees would engage in at least one option every year.

In addition, the Second NPRM proposes that broadcasters and cable entities retain records to demonstrate that they have recruited for all full-time

permanent positions. Under the proposal, such recordkeeping would include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date of each hire, and proof of participation in menu options. The Second NPRM notes that our former rule required licensees and cable entities to keep track of the referral source of all interviewees and hirees. The Second NPRM requests comments as to whether this information is necessary in order to validate that outreach is actually effective, or if other information should be required. The Second NPRM further proposes that broadcasters' records be maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities would retain their records for a minimum of seven years.

The Second NPRM also proposes that stations and cable employment units place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled, recruitment sources used for each vacancy during the preceding year, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, and a brief description of the menu option items undertaken during the preceding year. The Second NPRM asks if stations and cable employment units should track the recruitment source of all full-time hirees and/or interviewees referred by each recruitment source for a vacancy. Such information would also be updated in the local public inspection file on an annual basis. Further, under the proposal, station units are to retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities are to retain their materials for a period of five years.

Further, the Second NPRM proposes that most broadcasters submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and that cable entities with six or more full-time employees submit copies of their EEO public inspection file to the Commission every five years. However, broadcasters would limit their submissions to cover only the last 12 months of EEO activity.

Also, the Second NPRM proposes that broadcasters file a Broadcast Mid-Term Report (Form 397) and place a copy of the Report in the public inspection file. Broadcasters would also continue placing a copy of Form 396 (Broadcast EEO Program Report) in the public inspection file. However, broadcasters would no longer be required to place a copy of their station's Form 395–B (Broadcast Station Annual Employment Report) in the public file. Cable employment units would continue placing a copy of Forms 395–A (Cable Television Annual Employment Report) or 395–M (Multi-Channel Video Program Distributor Annual Employment Report) in their public file.

The Second NPRM proposes that all broadcasters and cable entities, with the exception of small entities, comply with these recordkeeping and recording requirements. The proposed exception for small businesses would provide them with some relief of any disparate recordkeeping and reporting costs.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. Definition of a ''Small Business''

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 603(b)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), 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**.'' 5 U.S.C. 601(3). The new rules would apply to broadcast stations and cable entities, including MVPDs.

2. Issues in Applying the Definition of a ''Small Business''

We could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the

power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

The rules to be adopted pursuant to this Second NPRM will apply to television and radio stations. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513120. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1, Appendix A–9 (1995). Included in this industry are commercial, religious, educational, and other television stations. *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC code 4833, now NAICS code 51312) as: ''Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.'' Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. 1992 Census, Series UC92-S–1, at Appendix A–9. Separate establishments primarily engaged in producing taped television program materials are classified under other NAICS numbers. *Id.*; formerly SIC code 7812 (Motion Picture and Video Tape Production) (NAICS code 512110); formerly SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs) (NAICS codes 512110, 512191, 512290).

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. That number has remained fairly constant as indicated by the approximately 1,686 operating full-service television broadcasting stations in the nation as of September 2001. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001). For 1992[1] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. (The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the proposed rules will affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. (We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 2001 total of 1,686 TV stations to arrive at stations categorized as small businesses.) These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In August 1998, minorities owned and controlled 32 (2.6%) of 1,209 commercial television stations in the United States. *Minority Commercial Broadcast Ownership in the United States,* U.S. Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (August 1998). (MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. The minority groups included in this report are Black, Hispanic, Asian, and Native American.) According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States. *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business,* WB87–1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, the Commission recently amended its Annual Ownership Report Form 323 to require information on the gender and race of broadcast license owners in future filings. *See 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, Report and Order,* MM Docket No. 98–43, 13 FCC Rcd 23,056 (1998).

The proposed rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. 13 CFR 121.201, NAICS codes 513111 and 513112. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. *Id.* The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. (The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.) Official Commission

[1] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III.

records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of September 2001, official Commission records indicate that 13,012 radio stations are currently operating. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001).

The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201 (NAICS codes 513210 and 513220). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), local multipoint distribution service (LMDS), satellite master antenna systems, and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities.

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 6393 (1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' 47 U.S.C. 543(m)(2). The Commission has determined that there are 67,700,000 subscribers in the United States. *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01–158 (January 24, 2001). Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: MDS involves a variety of transmitters, which are used to relay programming to the home or office. For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDA) and the Multichannel Multipoint Distibution Service (MMDS). The Commission has defined ''small entity'' for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 1.2110(a)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995). These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $11 million or less). *See* 13 CFR 121.201. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. *Id.* A BTA is the geographic area by which the MDS is licensed. *See* Rand McNally, *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

LMDS: The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Local Multipoint Distribution Service, Second Report and Order,* 12 FCC Rcd 12545 (1997). An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (January 6, 1998). There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

DBS: Because DBS provides subscription services, it falls within the SBA-recognized definition of ''Cable

and Other Pay Television Services.'' 13 CFR 121.201, NAICS codes 513210 and 513220. This definition provides that a small entity is one with $11.0 million or less in annual receipts. *Id.* Currently, there are four DBS providers, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. We base these estimates on a compilation performed by the Equal Employment Opportunity Staff, Mass Media Bureau, FCC. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 MVPD employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

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

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 (among others): (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. 5 U.S.C. 603(c).

One of the alternatives that this Second NPRM proposes is that broadcasters with station employment units of five to ten full-time employees be provided some relief from EEO program requirements, and that station employment units of fewer than five full-time employees be exempt altogether, with the exception that all broadcasters be subject to the nondiscrimination requirement and report any employment discrimination complaints filed against them. In addition, cable employment units, including MVPD employment units, employing six to ten full-time employees would be provided some relief from the proposed EEO program requirements, and cable employment units with fewer than six full-time employees would not be required to demonstrate compliance with the proposed EEO program requirements. We consider this alternative because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. Furthermore, these proposed rules streamline and clarify recordkeeping requirements, thereby benefiting all entities, including those with fewer employees. It is our belief that the proposed alternative balances the importance of deterring discrimination and achieving broad outreach in broadcast and cable employment practices against the need to maintain minimal regulatory burdens and the ease and clarity of administration.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

The proposed rules do not overlap, duplicate or conflict with any other rules.

List of Subjects

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–870 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 95

[WT Docket No. 01–339; FCC 01–366]

Garmin International, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Notice of Proposed Rule Making (NPRM),* the FCC proposes to amend Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. These rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons.

DATES: Written comments by the public on the proposed are due on or before February 13, 2002 and reply comments are due on or before February 28, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room TW–B204, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Cross, Wireless Telecommunications Bureau, at (202) 418–0691.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 01–366, adopted on December 12, 2001 and released on December 20, 2001. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. This *NPRM* seeks comment on a proposal to amend §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. In its Petition, Garmin International, Inc. (Garmin) proposes to allow FRS units to transmit Global Positioning System (GPS) location information using emission type F2D in a digital data burst of not more than one second. Prior to the submission of the Petition, Garmin sought a waiver (Waiver Request) of §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to allow it to manufacture and market inexpensive handheld FRS transceivers capable of transmitting GPS location information on FRS channels. The Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted a one-year waiver of the

FRS Rules on September 29, 2000. On reconsideration, the Division extended the term of the waiver grant to two years, subject to the resolution of the Petition. We believe that these rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons. Therefore, we are initiating this rulemaking proceeding to propose a modification of the authorized emission types and permissible communications rules.

Procedural Matters

2. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

3. In this *NPRM,* we propose to authorize an individual to use a FRS unit to satisfy his or her need for non-voice communications for the purpose of providing information about the location of the FRS unit to other FRS units. The proposed rules apply exclusively to individuals who use FRS units. Such modification would be in the public interest because it would allow the public to take advantage of technological developments in equipment and service that have occurred since the authorization of the FRS, availability of equipment at reasonable prices, and the removal of Selective Availability from the GPS signal.

4. In addition, the rules proposed in this *NPRM,* potentially could affect manufactures of FRS units. Based on requests from manufactures for certification of FRS units, we believe that there are between 5 and 10 manufactures of FRS units and that none of these manufactures are small entities. The proposed rule change, if adopted, applies to individuals who use FRS units and does not result in a mandatory change in manufactured FRS units. Rather, the proposed rule change is permissive and would allow a manufacture, if it so chose, to include additional features in the FRS units it manufactured. Therefore, we certify that the proposals in this *NPRM,* if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

5. *Paperwork Reduction Analysis.* This *NPRM* does not contain either a proposed or modified information collection requirement.

6. *Ex Parte Rules Presentations.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

7. *Alternative formats.* Alternative formats (computer diskette, large print, audiocassette, and Braille) are available from Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.* This NPRM can also be downloaded at *http://www.fcc.gov/dtf.*

8. *Comment Dates.* pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments are due on or before February 13, 2002, and reply comments are due on or before February 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

10. Parties who chose to file by paper must file an original and four copies of each filing. The docket number appearing in the caption of this proceeding must appear in each comment or filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

11. For further information, contact the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233, or via e-mail at *fccinfo@fcc.gov.*

A. Ordering Clauses

12. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), notice is hereby given of proposed amendment to §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's Rules, 47 CFR 95.193(a), 95.193(b), and 95.631(d), as described above.

13. The Petition for Rulemaking, RM–10070, submitted by Garmin International, Inc., on December 26, 2000, is granted to the extent indicated herein.

14. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 95 as follows:

1. The authority citation for Part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 95.193 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use an FRS unit to transmit one-way voice or non-voice communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide

location information, make a voice page, or to conduct a brief test.

(b) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must be transmitted continuously no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking. The FRS unit may transmit digital data containing location information. Digital data transmissions shall not exceed one second, must be initiated by a manual key press, and shall be limited to no more than one digital transmission within a ten-second period.

* * * * *

3. Section 95.631 is amended by revising paragraph (d) to read as follows:

§ 95.631 Emission types.

* * * * *

(d) An FRS unit may transmit only emission type F3E or F2D. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications or digital data transmission of location information.

* * * * *

[FR Doc. 02–787 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF84

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Endangered Status of Two Plants, *Lomatium Cookii* (Cook's Lomatium) and *Limnanthes Floccosa* ssp. *Grandiflora* (Large-Flowered Wooly Meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) as endangered species under the Endangered Species Act of 1973, as amended (Act). We are re-opening the comment period to provide the public an opportunity to review additional information on the status, abundance, and distribution of these plants, and to request additional information and comments from the public regarding the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period; all comments will be fully considered in the final rule.

DATES: We will accept public comments until March 15, 2002.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs or Rollie White at the above address, phone: 503/231–6179, facsimile: 503/231–6195.

SUPPLEMENTARY INFORMATION:

Background

Lomatium cookii (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) are two plants that inhabit seasonally wet habitats known as vernal pools in the Agate Desert, an area of approximately 83 square kilometers (32 square miles) north of Medford, Jackson County, Oregon. Cook's lomatium also occurs on seasonally wet soils in the adjacent county to the west, Josephine County, Oregon. The continued existence of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* is endangered primarily by destruction of their specialized vernal pool habitat by competition with non-native plants and industrial and residential development, including road and powerline construction and maintenance. Agricultural conversion and off-road vehicle (ORV) use also contribute to destruction of the habitat required by these plants. *Lomatium cookii* sites in Josephine County are additionally threatened by habitat alteration associated with gold mining, certain proposed timber projects, and woody species encroachment resulting from fire suppression.

On May 15, 2000, the Service published a proposed rule to list *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as endangered species and requested public comment for 60 days (65 FR 30941). On August 28, 2001, Siskiyou Regional Educational Project filed a citizen suit alleging that the Service had failed to make a timely final determination on the listing and critical habitat designation of these two plants, consistent with the time frames set forth in section 4 of the Act (*Siskiyou Regional Educational Project* v. *Norton,* Civil No. 01–1208–KI (D. Ore). We entered into a settlement agreement with the plaintiff and agreed to submit a final listing decision for publication in the **Federal Register** on or before October 31, 2002. By this notice, the Service is seeking updated information regarding the status, abundance, and distribution of these plants, as well as providing updated information now in the possession of the Service regarding the status of these two plants.

Current Status

The proposed rule published in May of 2000 did not contain data from surveys for these plants that had been conducted one month prior to publication of the proposed rule, during April of 2000 (David Evans and Associates 2000). Additional survey work was also conducted for both species in April of 2001. These data are provided below.

Each year, plant populations exhibit some natural variation in numbers, related primarily to temperature and rainfall conditions for that year. In general, numbers of annual plants, such as *Limnanthes floccosa* ssp. *grandiflora* may fluctuate more widely than those of perennial plants, such as *Lomatium cookii.* The year 2000 was a banner year for *Limnanthes floccosa* ssp. *grandiflora* populations due to the wet conditions that prevailed that year, but in 2001, a dry year, population numbers of this plant plummeted in many areas. For example, on a protected site owned by The Nature Conservancy (TNC), one *Limnanthes floccosa* ssp. *grandiflora* occurrence declined from 68,000 in 2000 to 39,000 in 2001. A site owned by the City of Medford, contained some 10,000 *Limnanthes floccosa* ssp. *grandiflora* individuals in the year 2000, while only 112 individuals were noted at this site in 2001 (D. Borgias, TNC, pers. comm. 2001). Year-to-year changes of this magnitude may be within the normal range of variation for this annual plant. However, it is possible that a number of consecutive drought years could eliminate some populations of *Limnanthes floccosa* ssp. *grandiflora.* In contrast, numbers of *Lomatium cookii* in the Agate Desert were generally stable or slightly increased from the year 2000 to 2001 (D. Borgias, TNC, pers. comm. 2001).

The Service now possesses information on three status changes that

would be considered outside the natural range of year-to-year variation for these plants and that was not available to us during development of the proposed rule for these plants. Two of these involve increased population sizes at historical *Lomatium cookii* sites. One of these sites, on private land, was believed to contain some 6,000 plants historically. Surveys in 2000 and 2001 revealed an estimated 500,000 flowering individuals. Another population, located on Medford airport property, that was previously estimated at some 1,000 plants, was found in 1999 to contain over 5,000 flowering *Lomatium cookii* plants. However, this larger population was cut in two last year by development of a new taxiway at this airport (K. O'Hara, David Evans & Associates, pers. comm. 2001). The third status change is that in the year 2000, *Limnanthes floccosa* ssp. *grandiflora* was discovered at a new location. This occurrence, on private land, comprised approximately 1,000 flowering individuals.

The 2000–2001 observations of these two vernal pool plant species must be considered within the context of the status and trends of their habitat overall. Recent studies of the Agate Desert vernal pool hydrology and vegetation indicate that no intact vernal pool habitat remains (ONHP 1997, 1999). The latter study (ORNP 1999) indicates that the highest quality remaining Agate Desert vernal pool habitat, that with intact hydrology and altered vegetation, is now present on an approximately 17.6 percent of the area. This is a decrease from the earlier study (ONHP 1997), cited in the May, 2000, **Federal Register** proposal, which estimated that this highest quality remaining habitat occurred on 23.1 percent of the area. This reported decrease in the amount of best available habitat is partially due to better-refined mapping techniques, but there is evidence that additional land leveling also occurred between the two studies (ONHP 1999). Both reported and unreported fills of Agate Desert vernal pool wetlands are occurring continually (C. Tuss USFWS biologist, pers. comm. 2001). ONHP (1999) reports that over 19 percent of Agate Desert vernal pool habitat has been leveled, and development (structures, roads, and other impermeable surfaces) has occurred on an additional 41 percent of this area (ONHP 1999). Thus, over 60 percent of the habitat of these plants in the Agate Desert has been destroyed, and none of the remaining habitat has escaped the invasion of weedy competitors. This compares with just under 60 percent habitat destruction reported in ONHP 1997 and in the proposed rule (65 FR 30941).

Recent evidence also indicates that non-native annual grasses are a greater problem than previously believed for *Lomatium cookii,* particularly in the Agate Desert. Unlike native perennial bunchgrasses that originally occupied the area, annual grasses die back each year, creating a buildup of thatch from the dead leaves that interferes with germination of *Lomatium cookii* seeds. Current observations indicate that without control of annual grasses through mowing, grazing or prescribed burns, *Lomatium cookii* populations tend to decrease over time, and could be extirpated within a relatively short time frame, due to this competition with non-native grasses (D. Borgias, TNC, pers. comm. 2001). In many cases, non-native plants have been purposefully planted, for livestock and other reasons, in the Agate Desert. For example, the Ken Denman Wildlife Reserve, encompassing some 720 hectares (1,780 acres) of Agate Desert land, is managed by the State primarily for waterfowl production. Much of this Reserve has been covered with log deck debris, plowed in strips and planted with non-native wildlife food plants (Brock 1987; J. Jacobs, pers. obs. 2000).

Populations of *Lomatium cookii* in Josephine County are becoming even more highly threatened by ORV use than they were at the time of the proposal. Over the past 2 years, gates erected by the Bureau of Land Management (BLM) to direct ORV traffic away from *Lomatium cookii* habitat have been repeatedly vandalized, and the intrusion into these areas continues. Particularly in the springtime, when the ground is wet and muddy (and *Lomatium cookii* plants are flowering), ORVs cause major rutting and disruption of *Lomatium cookii* habitat (L. Mazzu, BLM botanist, pers. comm. 2001).

Considering the above-noted population changes of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in the Agate Desert over the past 2 years in light of historic loss of habitat (65 FR 30941) and ongoing threats to these plants and their habitat, we conclude that the best available information still indicates both are in danger of extinction throughout all or a significant portion of their range, fitting the definition of endangered under the Act.

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 State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. (2) You may hand-deliver comments to our Oregon Fish and Wildlife 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 proposed rule is available on the Internet at our Web site *www.fws.gov* or by writing to the State Supervisor at the address under (1) above.

References Cited

David Evans and Associates. 2001. Agate Desert vernal pool surveys. (prepared for: Rogue Valley Council of Governments, Jackson County, Oregon), 16+ pp.

Oregon Natural Heritage Program. 1997. Agate Desert vernal pool habitat: Preliminary mapping and Assessment. Report to Oregon Division of State Lands, Contract No. 10738–369, 23+pp.

Oregon Natural Heritage Program. 1999. Assessment and map of the Agate Desert vernal pool ecosystem in Jackson County, Oregon: March 1998 imagery revision. Report to U.S. Fish and Wildlife Service, December 6, 1999, 15+pp.

Author

The primary author of this notice is Judy Jacobs, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 2001.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–812 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 236

[INS Order No. 1906–98]

RIN 1115–AF05

Processing, Detention, and Release of Juveniles

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On July 24, 1998, at 64 FR 39759, the Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register** proposing to establish procedures for processing juveniles in Service custody. Specifically, the proposed rule set forth proposed service policy for the release of juveniles from custody, as well as standards regarding the placement of juveniles in Service custody into state-licensed programs and detention facilities. The rule also proposed amendments concerning the transportation and transfer of juveniles in Service custody. The original comment period for the proposed rule closed on September 22, 1998. This document reopens the comment period to March 15, 2002. The Service is reopening the comment period to hear from the public on the following issues: determinations of who speaks for the child with respect to immigration matters, circumstances under which detention in a secure juvenile facility is necessary, and any additional ideas that may be helpful to minimize the number of juveniles who must be placed in Service custody.

DATES: Written comments must be submitted on or before March 15, 2002.

ADDRESSES: Please submit written comments to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 1906–98 on your correspondence. You may also submit comments to the Service electronically at *insregs@usdoj.gov.* When submitting comments electronically please include INS No. 1906–98 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Mark A. Matese, Director, Juvenile Affairs Division, Headquarters Office of Detention and Removal, Immigration and Naturalization, 425 I Street, NW., Washington, DC 20536, 202–305–2734 or 202–353–8228.

SUPPLEMENTARY INFORMATION:

Why is the Service Reopening the Comment Period?

The Service is currently examining the appropriate infrastructure and policies for managing and developing its programs relating to unaccompanied minors. As part of that process, the Service has decided to offer the public an additional opportunity to comment on the proposed rule, and particularly invites comments that relate to issues that have come to the public's attention since the close of the original comment period in 1998. The Service is reopening the comment period to hear from the public on the following issues: determinations of who speaks for the child with respect to immigration matters, circumstances under which detention in a secure juvenile facility is necessary, and any additional ideas that may be helpful to minimize the number of juveniles who must be placed in Service custody.

Where Can the Public View the July 24, 1998 Proposed Rule?

The July 24, 1998, proposed rule can be viewed on the Government Printing Office Web site at: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1998register&docid=98–19712–filed*

Dated: November 19, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–811 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 58P, 60, A60, B60, and 65–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 58P, 60, A60, B60, and 65–88 airplanes. This proposed AD would require you to install new exterior operating instruction placards for the exit doors. The proposed AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by the proposed AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible or understandable, this could result in the inability to open the exit door during an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 12, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer,

FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

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

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–32–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA believes that the instructions for opening the exit doors are either not visible or not easy to understand on Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes. This is based on an accident that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What are the consequences if the condition is not corrected? If the exterior door operating instruction placards are not visible or understandable, this could result in the inability to open the exit doors during an emergency situation.

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

What are the provisions of this service information? The service bulletin includes procedures for installing new exterior placards with improved operating instructions for the exit doors on the affected airplanes.

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

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

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

What would this proposed AD require? This proposed AD would require you to install new exterior operating instruction placards for the exit doors.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 850 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours X $60 per hour = $120	$40	$160	$136,000

The manufacturer will provide warranty credit for parts to the extent noted under MATERIAL INFORMATION in Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is ''within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first''.

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of the proposed AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would this proposed AD impact various entities? 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2001–CE–32–AD.

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

Model	Serial Nos.
58P	TJ–3 through TJ–497.
60	P–4 through P–122 and P–124 through P–126.
A60	P–123 and P–127 through P–246.
B60	P–247 through P–596.
65–88	LP–1 through LP–26, LP–28, and LP–30 through LP–47.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible or understandable, this could result in the inability to open the exit doors during an emergency situation.

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

Actions	Compliance	Procedures
Modify the exterior door operating procedures by installing the applicable placard as specified in the service bulletin.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 4, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–798 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–33–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142299–01 and REG–209135–88]

RINS 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a notice of public hearing on proposed rulemaking by cross-reference to temporary regulations relating to certain transfers of property to regulated investment companies and real estate investment trusts.

DATES: The public hearing is being held on May 1, 2002, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by April 10, 2002.

ADDRESSES: The public hearing is being held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Main entrance, located on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:IT&A:RU (REG–142299–01), 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: CC:IT&A:RU (REG–142299–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting them directly to the IRS Internet site at *http://www.irs.gov/tax__regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lisa Fuller, (202) 622–7750; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking by cross-reference to temporary regulations (REG–142299–01) that was published in

the **Federal Register** on Wednesday, January 2, 2002 (67 FR 48).

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 April 10, 2002.

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.

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–894 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking that proposed adding a new procedural rule setting forth settlement procedures for cases that come before the Federal Mine Safety and Health Review Commission. The new procedures were to be instituted as a pilot program for a two-year trial period. Since the issuance of the notice of proposed rulemaking, the Commission has reelvaluated the pilot program and has determined that withdrawal of the notice is appropriate at this time.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006; telephone 202–653–5610 (202–653–2673 for TDD relay). Telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: On November 10, 1999, the Commission issued a notice of proposed rulemaking, which proposed amending its procedural rules, 29 CFR part 2700, by adding a new procedural rule setting forth settlement procedures which were intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission (64 FR 61236–39). The Commission's procedural rules are currently silent regarding procedures to be utilized by administrative law judges (''ALJs'') to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of disputes have been determined informally by the individual ALJ assigned to the case. The proposed rule, 29 CFR 2700.85, was intended to provide a structured and formal system for settlement, which would be initiated by the appointing of a settlement judge on the motion of any party or on the chief administrative law judge's own initiative.

In response to a request by the Department of Labor's Office of the Solicitor, the Commission extended the comment period on the proposed rule for 30 days. 64 FR 68649 (Dec. 8, 1999). The Commission subsequently received comments suggesting, in part, that the settlement procedures should be initiated with the consent of all parties. In considering those comments, the Commission further examined the percentage of cases that settled and the length of time it took to reach settlement under the current informal system. Based upon that examination, the Commission has reconsidered the utility of a formal settlement system at the present time, and shall further evaluate the best means of effectuating the consensual resolution of disputes.

Withdrawal of the notice of proposed rulemaking constitutes only such action, and does not preclude the Commission from issuing another notice in the future, nor does it commit the Commission to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, or the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 29 CFR Part 2700

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published by the Commission in the **Federal Register** on November 10, 1999 (64 FR 61236–39) is withdrawn.

Dated: January 7, 2002.

Theodore F. Verheggen,

Chairman.

[FR Doc. 02–800 Filed 1–11–02; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office

32 CFR Part 326

NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DoD.

ACTION: Proposed rule.

SUMMARY: The National Reconnaissance Office (NRO) is proposing to exempt one Privacy Act system of records. The system of records is QNRO–21, Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes and to protect the privacy of individuals identified in the systems of records. The National Reconnaissance Office is proposing to exempt those records contained in this Privacy Act system of records when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The NRO is also proposing to exempt one Privacy Act system of records. The system of records is QNRO–19, Customer Security Services Personnel Security Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records. The NRO is moving part 326 from subchapter P to subchapter O—Privacy Program.

DATES: Comments must be received by March 15, 2002, to be considered by the agency.

ADDRESSES: National Reconnaissance Office, Information Access and Release

Center, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION:

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

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

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

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

2. Chapter I, subchapters O and P are proposed to be amended by removing 32 CFR part 326 from subchapter P and adding it to subchapter O.

3. Section 326.17 is proposed to be amended by adding paragraphs (h), (i) and (j) to read as follows:

§ 326.17 Exemptions.

* * * * *

(h) NRO–19

(1) *System name:* Customer Security Services Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

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

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

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

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigatory records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

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

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

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the

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

(i) NRO–21

(1) *System name:* Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

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

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

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

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

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

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

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

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

(j) QNRO–4, Freedom of Information Act and Privacy Act Files.

(1) *Exemption:* During the processing of a Freedom of Information Act/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the NRO hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(3) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–679 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AZ, CA, HI, NV, GU–067–NSPS; FRL–7127–3]

Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for Guam and the States of Arizona, California, Hawaii, and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has routinely approved most requests from state and local agencies in Region IX for delegation of New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs). This document is addressing general authorities mentioned in the regulations for NSPS and NESHAPs, proposing to update the delegations tables and clarifying those authorities that are retained by EPA. We are taking comments on this proposal and intend to follow with a final action.

DATES: Any comments must be received by February 13, 2002.

ADDRESSES: Mail comments to Andy Steckel, Chief, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of supporting information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR–4), San Francisco, California, 94105.

Please contact Cynthia G. Allen at (415) 947–4120 to arrange a time if inspection of the supporting information is desired.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen at (415) 947–4120 or Mae Wang at (415) 947–4124, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), 75 Hawthorne Street, San Francisco, California, 94105.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What is the purpose of this document?
Who is authorized to delegate these authorities?
What does delegation accomplish?
What authorities are not delegated by EPA?
Does EPA keep some authority?
Administrative Requirements

What Is the Purpose of This Document?

Through this document, EPA is proposing to accomplish the following objectives:

(1) Update the delegations tables in the Code of Federal Regulations, Title 40 (40 CFR), parts 60 and 61, to provide an accurate listing of the delegated standards; and

(2) Clarify those authorities that are retained by EPA and not granted to state or local agencies as part of delegation. These actions are described below.

Update of Tables in the CFR

Today's action proposes to update the delegation tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables would include the delegations approved in response to recent requests, as well as those previously granted. The proposed tables are shown at the end of this document. EPA is also proposing to update the addresses for state and local agencies within the jurisdiction of EPA Region IX.

Recent requests for delegation that will be incorporated into the updated CFR tables are identified below. Each individual submittal identifies the specific NSPS and NESHAPs for which delegation was requested. Some of these requests have already been approved and simply need to be included in the CFR. For requests listed below that have not yet been approved, EPA will consider these delegation requests as approved on the effective date of the final rulemaking that will follow today's action.

Agency	Date of request
Arizona Department of Environmental Quality	May 29, 1998, and October 6, 1999.
Kern County Air Pollution Control District	February 8, 1995, January 20, 2000, and May 18, 2001.
Lake County Air Quality Management District	February 24, 1997.
Mendocino County Air Quality Management District	May 21, 1999.
Sacramento Metropolitan Air Quality Management District	August 7, 1995, April 24, 1997, and July 7, 1998.
San Diego Air Pollution Control District	June 23 and December 24, 1999.
San Joaquin Valley Unified Air Pollution Control District	May 27, 1999, and June 26, 2000.
Santa Barbara County Air Pollution Control District	August 6, 1996.
Ventura County Air Pollution Control District	February 9, 1995.
Yolo-Solano Air Quality Management District	October 20, 1998.

In the future, EPA Region IX may establish a new procedural option for state and local agencies to receive delegation of 40 CFR part 60 and 61 standards. If an agency has delegation of a standard, then the new procedure may allow that agency to receive delegation of any amendments to that standard as they are adopted by reference. The details of any new procedure will be described in a future rulemaking action before it is implemented. It is being mentioned here for informational purposes only.

Clarification of Non-Delegable Authorities

In February 1999, EPA released a guidance document entitled, ''How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring—NSPS & NESHAPS, (EPA 305–B–99–004).'' In accordance with this guidance, today's action clarifies the NSPS and NESHAP authorities that are not delegated to state and local agencies under Clean Air Act sections 111 and 112. These clarifications will be codified at 40 CFR 60.4(d) and 61.04(c)(9). Today's action also requests that state and local agencies exclude the non-delegable subsections from future delegation requests, and informs the public of our intention to appropriately revise future delegation letter approvals and **Federal Register** announcements.

Who Is Authorized To Delegate These Authorities?

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorize the Administrator to delegate

his or her authority for implementing and enforcing standards in 40 CFR Parts 60 and 61.

What Does Delegation Accomplish?

Delegation grants a state or local agency the primary authority to implement and enforce federal standards. All required notifications and reports should be sent to the delegated state or local agency, as appropriate, with a copy to EPA Region IX. Acceptance of delegation constitutes agreement by the state or local agency to follow 40 CFR parts 60 and 61, and EPA's test methods and continuous monitoring procedures.

What Authorities Are Not Delegated by EPA?

In general, EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant, or alter the stringency of the underlying standards. The following describes in more detail the authorities in 40 CFR Parts 60 and 61 that are retained by EPA.

1. Provisions that address EPA's authority to delegate to states are not being delegated because it is inappropriate to imply that states have authority to delegate to themselves. These provisions include 40 CFR 60.4(b), 61.04(b), and 61.04(c); part 60, subpart B; and part 60, subpart C.

2. Provisions that require federal oversight to ensure national consistency and EPA's ability to enforce the standards are not being delegated. These provisions include 40 CFR 61.05(c) and 61.11.

3. Provisions that grant EPA discretion to approve modifications to test methods or protocols are not being delegated in order to ensure uniformity and technical quality in enforcement of national standards. These provisions include 40 CFR 60.8(b); 60.11(b); 60.13(a),(d)(2), and (g); 60.13(i); 61.13(h)(1)(ii); and 61.14(d) and (g)(1)(ii).

4. Provisions that require rulemaking cannot be delegated because states cannot perform federal rulemaking. These provisions include 40 CFR 60.11(e) and 61.12(d).

5. Provisions that address EPA's obligation to make certain information available to the public does not apply to states under federal law and is not appropriate for delegation. These provisions include 40 CFR 60.9 and 61.16.

6. Appendices to 40 CFR parts 60 and 61 are not performance standards and are not delegable under Clean Air Act Section 111(c)(1) or 112(l)(1). However, all applicable test methods and other requirements in the Appendices must be followed for the delegated subparts.

As additional assurance of national consistency, state and local agencies must send to EPA Region IX Air Division's Enforcement Office Chief a copy of any written decisions made pursuant to the following delegated authorities:

- Applicability determinations that state a source is not subject to a rule or requirement;
- Approvals or determination of construction, reconstruction or modification;
- Minor or intermediate site-specific changes to test methods or monitoring requirements; or
- Site-specific changes or waivers of performance testing requirements.

For decisions that require EPA review and approval (for example, major changes to monitoring requirements), EPA intends to make determinations in a timely manner.

In some cases, the standards themselves specify that specific provisions cannot be delegated. State and local agencies should review each individual standard for this information.

Does EPA Keep Some Authority?

EPA retains independent authority to enforce the standards and regulations of 40 CFR parts 60 and 61.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have 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 would merely approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation requests, 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 delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for delegation, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action 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 proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 60 and 61

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 101, 110, 112, and 301

of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: December 18, 2001.

Jack P. Broadbent,

Director, Air Division, Region IX.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

2. Section 60.4 is amended:

a. In paragraph (a) by revising the address for ''Region IX''.

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By revising paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (d).

The revisions and additions read as follows:

§ 60.4 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County Air Pollution Control District (Southeast Desert), 2700 M Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, DeWitt Center, 11464 ''B'' Avenue, Auburn, CA 95603–2603

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117–3027

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(M) Hawaii:

Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI 96814

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

Note: Tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

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(d) The following tables list the specific Part 60 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 60.4(b), 60.8(b), 60.9, 60.11(b), 60.11(e), 60.13(a), 60.13(d)(2), 60.13(g), 60.13(i).

(1) Arizona. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency		Pima County	Pinal County
		Arizona DEQ	Maricopa County		
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X		X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial Steam Generating Units	X	X	X	X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors	X	X		X
Eb	Portland Cement Plants	X			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X	X	X	X
G	Nitric Acid Plants	X	X	X	X
H	Sulfuric Acid Plants	X	X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X		X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	X	X	X
Q	Primary Zinc Smelters	X	X	X	X
R	Primary Lead Smelters	X	X	X	X
S	Primary Aluminum Reduction Plants	X	X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X	X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X	X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X	X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X	X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y	Coal Preparation Plants	X	X	X	X
Z	Ferroalloy Production Facilities	X	X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB	Kraft pulp Mills	X	X	X	X
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants	X	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X	X
NN	Phosphate Rock Plants	X	X	X	X
PP	Ammonium Sulfate Manufacture	X	X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X	X	X	X
SS	Industrial Surface Coating: Large Appliances	X	X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

	Subpart	Air pollution control agency		Pima County	Pinal County
		Arizona DEQ	Maricopa County		
TT	Metal Coil Surface Coating	X	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X	X	X	X
WW	Beverage Can Surface Coating Industry	X	X	X	X
XX	Bulk Gasoline Terminals	X	X	X	X
AAA	New Residential Wool Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	X	X	X
HHH	Synthetic Fiber Production Facilities	X	X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X	X	X
JJJ	Petroleum Dry Cleaners	X	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X	X		X
MMM	(Reserved)	X	X	X	X
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X	X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities	X	X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU	Calciners and Dryers in Mineral Industries	X			
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X			

(2) California. The following tables identify delegations for each of the local air pollution control agencies of California.

(i) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
A	General Provisions			X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.			X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators			X	
Ea	Municipal Waste Combustors			X	
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants			X	
G	Nitric Acid Plants			X	
H	Sulfuric Acid Plants			X	
I	Hot Mix Asphalt Facilities			X	
J	Petroleum Refineries			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.			X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters			X	
M	Secondary Brass and Bronze Production Plants			X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants			X	
P	Primary Copper Smelters			X	
Q	Primary Zinc Smelters			X	
R	Primary Lead Smelters			X	
S	Primary Aluminum Reduction Plants			X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants			X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants			X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants			X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants			X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.			X	
Y	Coal Preparation Plants			X	
Z	Ferroalloy Production Facilities			X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.			X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills			X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators			X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants			X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters			X	
BBB	Rubber Tire Manufacturing Industry			X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.			X	
JJJ	Petroleum Dry Cleaners			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County APCD
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions				
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities			X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.			X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills.				

(ii) [Reserved]

(iii) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions		X		X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.		X		X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.		X		X
Db	Industrial-Commercial-Institutional Steam Generating Units		X		X
Dc	Small Industrial Steam Generating Units		X		X
E	Incinerators		X		X
Ea	Municipal Waste Combustors		X		
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants		X		X
G	Nitric Acid Plants		X		X
H	Sulfuric Acid Plants		X		
I	Hot Mix Asphalt Facilities		X		X
J	Petroleum Refineries		X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X		X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X		X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X		X
L	Secondary Lead Smelters		X		X
M	Secondary Brass and Bronze Production Plants		X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X		X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X		X
O	Sewage Treatment Plants		X		X
P	Primary Copper Smelters		X		X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
Q	Primary Zinc Smelters		X		X
R	Primary Lead Smelters		X		X
S	Primary Aluminum Reduction Plants		X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X		X
Y	Coal Preparation Plants		X		X
Z	Ferroalloy Production Facilities		X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X		X
BB	Kraft pulp Mills		X		X
CC	Glass Manufacturing Plants		X		X
DD	Grain Elevators		X		X
EE	Surface Coating of Metal Furniture		X		X
FF	(Reserved)				
GG	Stationary Gas Turbines		X		X
HH	Lime Manufacturing Plants		X		X
KK	Lead-Acid Battery Manufacturing Plants		X		X
LL	Metallic Mineral Processing Plants		X		X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X		X
NN	Phosphate Rock Plants		X		X
PP	Ammonium Sulfate Manufacture		X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X		X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X		X
SS	Industrial Surface Coating: Large Appliances		X		X
TT	Metal Coil Surface Coating		X		X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X		X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X		X
WW	Beverage Can Surface Coating Industry		X		X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X		X
BBB	Rubber Tire Manufacturing Industry		X		X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X		X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X		X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X		X
HHH	Synthetic Fiber Production Facilities		X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X		X
JJJ	Petroleum Dry Cleaners		X		X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X		X
LLL	Onshore Natural Gas Processing: SO2 Emissions				X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X		X
OOO	Nonmetallic Mineral Processing Plants		X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X		X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.				X
SSS	Magnetic Tape Coating Facilities		X		X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X		X
UUU	Calciners and Dryers in Mineral Industries		X		X
VVV	Polymeric Coating of Supporting Substrates Facilities		X		X
WWW	Municipal Solid Waste Landfills				X

(iv) Delegations for Lake County Air Quality Management District, Lassen County Air Pollution Control District, Mariposa County Air Pollution Control District, and Mendocino County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Lake County AQMD	Lassen County APCD	Mariposa County AQMD	Mendocino County AQMD
A	General Provisions	X			X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X			X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X			X
Db	Industrial-Commercial-Institutional Steam Generating Units	X			
Dc	Small Industrial Steam Generating Units	X			X
E	Incinerators	X			X
Ea	Municipal Waste Combustors	X			X
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X			X
G	Nitric Acid Plants	X			X
H	Sulfuric Acid Plants	X			X
I	Hot Mix Asphalt Facilities	X			X
J	Petroleum Refineries	X			X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X			X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X			X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X			X
L	Secondary Lead Smelters	X			X
M	Secondary Brass and Bronze Production Plants	X			X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X			X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X			X
O	Sewage Treatment Plants	X			X
P	Primary Copper Smelters	X			X
Q	Primary Zinc Smelters	X			X
R	Primary Lead Smelters	X			X
S	Primary Aluminum Reduction Plants	X			X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X			X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X			X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X			X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X			
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X			X
Y	Coal Preparation Plants	X			X
Z	Ferroalloy Production Facilities	X			X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X			X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X			X
BB	Kraft pulp Mills	X			X
CC	Glass Manufacturing Plants	X			X
DD	Grain Elevators	X			X
EE	Surface Coating of Metal Furniture	X			X
FF	(Reserved)				
GG	Stationary Gas Turbines	X			X
HH	Lime Manufacturing Plants	X			X
KK	Lead-Acid Battery Manufacturing Plants	X			X
LL	Metallic Mineral Processing Plants	X			X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X			X
NN	Phosphate Rock Plants	X			X
PP	Ammonium Sulfate Manufacture	X			X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Lake County AQMD	Lassen County APCD	Mariposa County AQMD	Mendocino County AQMD
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X			X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X			X
SS	Industrial Surface Coating: Large Appliances	X			X
TT	Metal Coil Surface Coating	X			X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X			X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X			X
WW	Beverage Can Surface Coating Industry	X			X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X			X
BBB	Rubber Tire Manufacturing Industry	X			X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X			X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X			X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X			X
HHH	Synthetic Fiber Production Facilities	X			X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X			X
JJJ	Petroleum Dry Cleaners	X			X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X			X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X			X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations	X			X
OOO	Nonmetallic Mineral Processing Plants	X			X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X			X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X			X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	X			
SSS	Magnetic Tape Coating Facilities	X			X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X			X
UUU	Calciners and Dryers in Mineral Industries	X			X
VVV	Polymeric Coating of Supporting Substrates Facilities	X			X
WWW	Municipal Solid Waste Landfills	X			

(v) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A	General Provisions	X		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X		X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X		X	X
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators	X		X	X
Ea	Municipal Waste Combustors				
Eb	Portland Cement Plants				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996				
F	Portland Cement Plants	X		X	X
G	Nitric Acid Plants	X		X	X
H	Sulfuric Acid Plants	X		X	X
I	Hot Mix Asphalt Facilities	X		X	X
J	Petroleum Refineries	X		X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X		X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X		X	X
L	Secondary Lead Smelters	X		X	X
M	Secondary Brass and Bronze Production Plants	X		X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		X	X
O	Sewage Treatment Plants	X		X	X
P	Primary Copper Smelters	X		X	X
Q	Primary Zinc Smelters	X		X	X
R	Primary Lead Smelters	X		X	X
S	Primary Aluminum Reduction Plants	X		X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X		X	X
Y	Coal Preparation Plants	X		X	X
Z	Ferroalloy Production Facilities	X		X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		X	X
BB	Kraft pulp Mills	X		X	X
CC	Glass Manufacturing Plants	X		X	X
DD	Grain Elevators	X		X	X
EE	Surface Coating of Metal Furniture	X		X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X		X	X
HH	Lime Manufacturing Plants	X		X	X
KK	Lead-Acid Battery Manufacturing Plants	X		X	X
LL	Metallic Mineral Processing Plants	X		X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X		X	X
NN	Phosphate Rock Plants	X		X	X
PP	Ammonium Sulfate Manufacture	X		X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X		X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X	X
SS	Industrial Surface Coating: Large Appliances	X		X	X
TT	Metal Coil Surface Coating	X		X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X		X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X		X	X
WW	Beverage Can Surface Coating Industry	X		X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X		X	X
BBB	Rubber Tire Manufacturing Industry	X		X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X		X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X	X
HHH	Synthetic Fiber Production Facilities	X		X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes				
JJJ	Petroleum Dry Cleaners	X		X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X		X	X
LLL	Onshore Natural Gas Processing: SO2 Emissions	X		X	X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X		X	
OOO	Nonmetallic Mineral Processing Plants	X		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X		X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities	X		X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X		X	X
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	X
WWW	Municipal Solid Waste Landfills				

(vi) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
A	General Provisions		X		X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.				X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.				X
Db	Industrial-Commercial-Institutional Steam Generating Units				X
Dc	Small Industrial Steam Generating Units				X
E	Incinerators				X
Ea	Municipal Waste Combustors				X
Eb	Portland Cement Plants				X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				X
F	Portland Cement Plants				X
G	Nitric Acid Plants				X
H	Sulfuric Acid Plants				X
I	Hot Mix Asphalt Facilities				X
J	Petroleum Refineries				X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.				X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.				X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleumn Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.				X
L	Secondary Lead Smelters				X
M	Secondary Brass and Bronze Production Plants				X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.				X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.				
O	Sewage Treatment Plants				X
P	Primary Copper Smelters				X
Q	Primary Zinc Smelters				X
R	Primary Lead Smelters				X
S	Primary Aluminum Reduction Plants				X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants				X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants				X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants				X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants				X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.				X
Y	Coal Preparation Plants				X
Z	Ferroalloy Production Facilities				X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.				X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.				X
BB	Kraft Pulp Mills				X
CC	Glass Manufacturing Plants				X
DD	Grain Elevators				X
EE	Surface Coating of Metal Furniture				X
FF	(Reserved)				
GG	Stationary Glass Turbines				X
HH	Lime Manufacturing Plants				X
KK	Lead-Acid Battery Manufacturing Plants				X
LL	Metallic Mineral Processing Plants				X
MM	Automobile and Light Duty Trucks Surface Coating Operations				X
NN	Phosphate Rock Plants				X
PP	Ammonium Sulfate Manufacture				X
QQ	Graphic Arts Industry: Publication Rotogravure Printing				X
RR	Pressure Sensitive Tape and Label Surface Coating Operations				X
SS	Industrial Surface Coating: Large Appliances				X
TT	Metal Coil Surface Coating				X
UU	Asphalt Processing and Asphalt Roofing Manufacture				X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.				X
WW	Beverage Can Surface Coating Industry				X
XX	Bulk Gasoline Terminals.				
AAA	New Residential Wood Heaters				X
BBB	Rubber Tire Manufacturing Industry				X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.				X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing				X
GGG	Equipment Leaks of VOC in Petroleum Refineries				X
HHH	Synthetic Fiber Production Facilities				X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.				X
JJJ	Petroleum Dry Cleaners				X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.				X
LLL	Onshore Natural Gas Processing: SO_2 Emissions				X
MMM	(Reserved)				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metropolitan AQMD
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.				X
OOO	Nonmetallic Mineral Processing Plants				X
PPP	Wood Fiberglass Insulation Manufacturing Plants				X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems				X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.				X
SSS	Magnetic Tape Coating Facilities				X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.				X
UUU	Calciners and Dryers in Mineral Industries				X
VVV	Polymeric Coating of Supporting Substrates Facilities				X
WWW	Municipal Solid Waste Landfills				X

(vii) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.		X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.		X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X	X
Dc	Small Industrial Steam Generating Units	X	X		X
E	Incinerators		X	X	X
Ea	Municipal Waste Combustors		X	X	X
Eb	Portland Cement Plants			X	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants		X	X	X
G	Nitric Acid Plants		X	X	X
H	Sulfuric Acid Plants		X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries		X	X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters		X	X	X
M	Secondary Brass and Bronze Production Plants		X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	X	X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters		X	X	X
Q	Primary Zinc Smelters		X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
R	Primary Lead Smelters		X	X	X
S	Primary Aluminum Reduction Plants		X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X	X	X
Y	Coal Preparation Plants		X	X	X
Z	Ferroalloy Production Facilities		X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	X	X
BB	Kraft pulp Mills		X	X	X
CC	Glass Manufacturing Plants		X	X	X
DD	Grain Elevators		X	X	X
EE	Surface Coating of Metal Furniture		X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines		X	X	X
HH	Lime Manufacturing Plants		X	X	X
KK	Lead-Acid Battery Manufacturing Plants		X	X	X
LL	Metallic Mineral Processing Plants		X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	X	X
NN	Phosphate Rock Plants		X	X	X
PP	Ammonium Sulfate Manufacture		X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	X	X
SS	Industrial Surface Coating: Large Appliances		X	X	X
TT	Metal Coil Surface Coating		X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X	X	X
WW	Beverage Can Surface Coating Industry		X	X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X	X	X
BBB	Rubber Tire Manufacturing Industry		X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	X	X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	X	X
HHH	Synthetic Fiber Production Facilities		X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	X	X
JJJ	Petroleum Dry Cleaners		X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions		X	X	X
MMM	(Reserved).				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	X	X
SSS	Magnetic Tape Coating Facilities		X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	X
VVV	Polymeric Coating of Supporting Substrates Facilities		X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	X

(viii) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions	X	X	X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.			X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators			X	
Ea	Municipal Waste Combustors			X	
Eb	Portland Cement Plants				
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.				
F	Portland Cement Plants			X	
G	Nitric Acid Plants			X	
H	Sulfuric Acid Plants			X	
I	Hot Mix Asphalt Facilities			X	
J	Petroleum Refineries			X	
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.			X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters			X	
M	Secondary Brass and Bronze Production Plants			X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.			X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants			X	
P	Primary Copper Smelters			X	
Q	Primary Zinc Smelters			X	
R	Primary Lead Smelters			X	
S	Primary Aluminum Reduction Plants			X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants			X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants			X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants			X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants			X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.			X	
Y	Coal Preparation Plants			X	
Z	Ferroalloy Production Facilities			X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.			X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills			X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators			X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants			X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters			X	
BBB	Rubber Tire Manufacturing Industry			X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.			X	
JJJ	Petroleum Dry Cleaners			X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions			X	
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes				
SSS	Magnetic Tape Coating Facilities			X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.			X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills				

(ix) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978		X	
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X
Dc	Small Industrial Steam Generating Units		X	
E	Incinerators		X	
Ea	Municipal Waste Combustors		X	
Eb	Portland Cement Plants			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996			
F	Portland Cement Plants		X	
G	Nitric Acid Plants		X	
H	Sulfuric Acid Plants		X	
I	Hot Mix Asphalt Facilities		X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
J	Petroleum Refineries		X	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X	
L	Secondary Lead Smelters		X	
M	Secondary Brass and Bronze Production Plants		X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	
O	Sewage Treatment Plants		X	
P	Primary Copper Smelters		X	
Q	Primary Zinc Smelters		X	
R	Primary Lead Smelters		X	
S	Primary Aluminum Reduction Plants		X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities		X	
Y	Coal Preparation Plants		X	
Z	Ferroalloy Production Facilities		X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	
BB	Kraft pulp Mills		X	
CC	Glass Manufacturing Plants		X	
DD	Grain Elevators		X	
EE	Surface Coating of Metal Furniture		X	
FF	(Reserved)			
GG	Stationary Gas Turbines		X	
HH	Lime Manufacturing Plants		X	
KK	Lead-Acid Battery Manufacturing Plants		X	
LL	Metallic Mineral Processing Plants		X	
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	
NN	Phosphate Rock Plants		X	
PP	Ammonium Sulfate Manufacture		X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	
SS	Industrial Surface Coating: Large Appliances		X	
TT	Metal Coil Surface Coating		X	
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry		X	
WW	Beverage Can Surface Coating Industry		X	
XX	Bulk Gasoline Terminals			
AAA	New Residential Wool Heaters		X	
BBB	Rubber Tire Manufacturing Industry		X	
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing		X	
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	
HHH	Synthetic Fiber Production Facilities		X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	
JJJ	Petroleum Dry Cleaners		X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants		X	
LLL	Onshore Natural Gas Processing: SO2 Emissions		X	
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
OOO	Nonmetallic Mineral Processing Plants		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	
SSS	Magnetic Tape Coating Facilities		X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines		X	
UUU	Calciners and Dryers in Mineral Industries		X	
VVV	Polymeric Coating of Supporting Substrates Facilities		X	
WWW	Municipal Solid Waste Landfills		X	X

(3) Hawaii. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X
Dc	Small Industrial Steam Generating Units	X
E	Incinerators	X
Ea	Municipal Waste Combustors	X
Eb	Portland Cement Plants	X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996	
F	Portland Cement Plants	X
G	Nitric Acid Plants	
H	Sulfuric Acid Plants	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X
L	Secondary Lead Smelters	
M	Secondary Brass and Bronze Production Plants	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983	
O	Sewage Treatment Plants	X
P	Primary Copper Smelters	
Q	Primary Zinc Smelters	
R	Primary Lead Smelters	
S	Primary Aluminum Reduction Plants	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	
Y	Coal Preparation Plants	X
Z	Ferroalloy Production Facilities	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983	X
BB	Kraft pulp Mills	
CC	Glass Manufacturing Plants	
DD	Grain Elevators	
EE	Surface Coating of Metal Furniture	
FF	(Reserved)	
GG	Stationary Gas Turbines	X
HH	Lime Manufacturing Plants	
KK	Lead-Acid Battery Manufacturing Plants	
LL	Metallic Mineral Processing Plants	
MM	Automobile and Light Duty Trucks Surface Coating Operations	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
NN	Phosphate Rock Plants	
PP	Ammonium Sulfate Manufacture	
QQ	Graphic Arts Industry: Publication Rotogravure Printing	
RR	Pressure Sensitive Tape and Label Surface Coating Operations	
SS	Industrial Surface Coating: Large Appliances	
TT	Metal Coil Surface Coating	
UU	Asphalt Processing and Asphalt Roofing Manufacture	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X
WW	Beverage Can Surface Coating Industry	X
XX	Bulk Gasoline Terminals	X
AAA	New Residential Wool Heaters	
BBB	Rubber Tire Manufacturing Industry	
CCC	(Reserved)	
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry	
EEE	(Reserved)	
FFF	Flexible Vinyl and Urethane Coating and Printing	
GGG	Equipment Leaks of VOC in Petroleum Refineries	X
HHH	Synthetic Fiber Production Facilities	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes	
JJJ	Petroleum Dry Cleaners	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	
LLL	Onshore Natural Gas Processing: SO_2 Emissions	
MMM	(Reserved)	
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X
OOO	Nonmetallic Mineral Processing Plants	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes	
SSS	Magnetic Tape Coating Facilities	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	
UUU	Calciners and Dryers in Mineral Industries	X
VVV	Polymeric Coating of Supporting Substrates Facilities	X
WWW	Municipal Solid Waste Landfills	

(4) Nevada. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
A	General Provisions	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X		
Db	Industrial-Commercial-Institutional Steam Generating Units			
Dc	Small Industrial Steam Generating Units			
E	Incinerators	X	X	X
Ea	Municipal Waste Combustors			
Eb	Portland Cement Plants			
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996			
F	Portland Cement Plants	X	X	X
G	Nitric Acid Plants	X		X
H	Sulfuric Acid Plants	X		X
I	Hot Mix Asphalt Facilities	X	X	X
J	Petroleum Refineries	X		X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X		
L	Secondary Lead Smelters	X	X	X
M	Secondary Brass and Bronze Production Plants	X		X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air pollution control agency		
		Nevada DEP	Clark County	Washoe County
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X		
O	Sewage Treatment Plants	X	X	X
P	Primary Copper Smelters	X	X	X
Q	Primary Zinc Smelters	X	X	X
R	Primary Lead Smelters	X	X	X
S	Primary Aluminum Reduction Plants	X		X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	X		X
Y	Coal Preparation Plants	X	X	X
Z	Ferroalloy Production Facilities	X		X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X		
BB	Kraft pulp Mills	X		X
CC	Glass Manufacturing Plants	X		X
DD	Grain Elevators	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X
FF	(Reserved)			
GG	Stationary Gas Turbines	X	X	X
HH	Lime Manufacturing Plants	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X
NN	Phosphate Rock Plants	X	X	X
PP	Ammonium Sulfate Manufacture	X		X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X		X
SS	Industrial Surface Coating: Large Appliances	X	X	X
TT	Metal Coil Surface Coating	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X	X	X
WW	Beverage Can Surface Coating Industry	X		X
XX	Bulk Gasoline Terminals	X		X
AAA	New Residential Wool Heaters			
BBB	Rubber Tire Manufacturing Industry			
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry			
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing	X		X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X		X
HHH	Synthetic Fiber Production Facilities	X		X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes			
JJJ	Petroleum Dry Cleaners	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	X		
LLL	Onshore Natural Gas Processing: SO2 Emissions	X		
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations			
OOO	Nonmetallic Mineral Processing Plants	X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems			
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes			
SSS	Magnetic Tape Coating Facilities			
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines			
UUU	Calciners and Dryers in Mineral Industries			
VVV	Polymeric Coating of Supporting Substrates Facilities			
WWW	Municipal Solid Waste Landfills			

(5) Guam. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GUAM

	Subpart	Guam
A	General Provisions	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	
Db	Industrial-Commercial-Institutional Steam Generating Units.	
Dc	Small Industrial Steam Generating Units.	
E	Incinerators.	
Ea	Municipal Waste Combustors.	
Eb	Portland Cement Plants.	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	
F	Portland Cement Plants.	
G	Nitric Acid Plants.	
H	Sulfuric Acid Plants.	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X

PART 61 —[AMENDED]

1. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

2. Section 61.04 is amended:

a. In paragraph (a) by revising the address for ''Region IX''.

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By adding paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (c)(9).

The revisions and additions read as follows:

§ 61.04 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94l09

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County Air Pollution Control District (Southeast Desert), 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, DeWitt Center, 11464 ''B'' Avenue, Auburn, CA 95603–2603

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian, Drive, B–23, Goleta, CA 93117–3027

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(M) Hawaii:

Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI, 96814

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

Note: For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(c) * * *

(9) The following tables list the specific Part 61 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 61.04(b), 61.04(c), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16.

(i) Arizona. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR PART 61 STANDARDS FOR ARIZONA

	Subpart	Air pollution control agency			
		Arizona DEO	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium	X	X	X	X
D	Beryllium Rocket Motor Firing	X	X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride	X	X	X	X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X	X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants				
L	Benzene Emissions from Coke By-Product Recovery Plants	X	X	X	X
M	Asbestos	X	X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X	X		X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X	X		X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X	X		
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)	X	X	X	X
W	Radon Emissions From Operating Mill Tailings				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels	X	X	X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations	X	X	X	X
CC–EE	(Reserved).				
FF	Benzene Waste Operations	X	X	X	X

(ii) California. The following tables identify delegations for each of the local air pollution control agencies of California.

(A) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

	Subpart	Air pollution control agency			
		Amador County APCD	Antelope Valley APCD	Bay Area AQMD	Butte County AQMD
A	General Provisions.				
B	Radon Emissions From Underground Uranium.				
C	Beryllium.				
D	Beryllium Rocket Motor Firing.				
E	Mercury.				
F	Vinyl Chloride.				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants			X	
M	Asbestos			X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.				
O	Inorganic Arsenic Emissions From Primary Copper Smelters.				
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources).				
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(B) [Reserved]

(C) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions				X
B	Radon Emissions From Underground Uranium				
C	Beryllium				X
D	Beryllium Rocket Motor Firing				X
E	Mercury				X
F	Vinyl Chloride				X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene				X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions From Coke By-Product Recovery Plants.				X
M	Asbestos				X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants				X
O	Inorganic Arsenic Emissions From Primary Copper Smelters				X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				X
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

	Subpart	Air pollution control agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
S	(Reserved)				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)				X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels				X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations				X
CC–EE	(Reserved).				
FF	Benzene Waste Operations				X

(D) [Reserved]

(E) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Modoc County APCD	Mojave Desert AQMD	Monterey Bay Unified APCD	North Coast Unified AQMD
A	General Provisions	X		X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium	X		X	X
D	Beryllium Rocket Motor Firing	X		X	X
E	Mercury	X		X	X
F	Vinyl Chloride	X	X	X	
G	(Reserved)				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Rugulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X		X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions From Coke By-Product Recovery Plants			X	X
M	Asbestos	X		X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants			X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X		X	
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)	X		X	X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(F) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR PART 61 STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency			
		Northern Sierra AQMD	Northern Sonoma County APCD	Placer County APCD	Sacramento Metro AQMD
A	General Provisions.				
B	Radon Emissions From Underground Uranium.				
C	Beryllium.				
D	Beryllium Rocket Motor Firing.				
E	Mercury.				
F	Vinyl Chloride.				
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.				
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants.				
M	Asbestos				
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.				
O	Inorganic Arsenic Emissions From Primary Copper Smelters.				
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources).				
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels.				
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations.				
CC–EE	(Reserved).				
FF	Benzene Waste Operations.				

(G) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium.				
C	Beryllium		X	X	X
D	Beryllium Rocket Motor Firing		X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride		X	X	X
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants.			X	X
M	Asbestos		X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	X	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters		X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air pollution control agency			
		San Diego County APCD	San Joaquin Valley APCD	San Luis Obispo County APCD	Santa Barbara County APCD
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	X	X
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)		X	X	X
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	X
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations			X	X
CC–EE	(Reserved).				
FF	Benzene Waste Operations		X	X	X

(H) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air pollution control agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions			X	
B	Radon Emissions From Underground Uranium.				
C	Beryllium			X	
D	Beryllium Rocket Motor Firing			X	
E	Mercury			X	
F	Vinyl Chloride			X	
G	(Reserved).				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene			X	
K	Radionuclide Emissions From Elemental Phosphorus Plants.				
L	Benzene Emissions from Coke By-Product Recovery Plants			X	
M	Asbestos			X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants			X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters			X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.			X	
Q	Radon Emissions From Department of Energy Facilities.				
R	Radon Emissions From Phosphogypsum Stacks.				
S	(Reserved).				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.				
U	(Reserved).				
V	Equipment Leaks (Fugitive Emission Sources)			X	
W	Radon Emissions From Operating Mill Tailings.				
X	(Reserved).				
Y	Benzene Emissions From Benzene Storage Vessels			X	
Z–AA	(Reserved).				
BB	Benzene Emissions From Benzene Transfer Operations			X	
CC–EE	(Reserved).				
FF	Benzene Waste Operations			X	

(I) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air pollution control agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	
B	Radon Emissions From Underground Uranium.			
C	Beryllium		X	
D	Beryllium Rocket Motor Firing		X	
E	Mercury		X	
F	Vinyl Chloride		X	
G	(Reserved).			
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities			
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.			
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	
K	Radionuclide Emissions From Elemental Phosphorus Plants.			
L	Benzene Emissions from Coke By-Product Recovery Plants		X	
M	Asbestos		X	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	
Q	Radon Emissions From Department of Energy Facilities.			
R	Radon Emissions From Phosphogypsum Stacks.			
S	(Reserved).			
T	Radon Emissions From the Disposal of Uranium Mill Tailings.			
U	(Reserved).			
V	Equipment Leaks (Fugitive Emission Sources)		X	
W	Radon Emissions From Operating Mill Tailings.			
X	(Reserved).			
Y	Benzene Emissions From Benzene Storage Vessels.		X	
Z–AA	(Reserved).			
BB	Benzene Emissions From Benzene Transfer Operations.		X	
CC–EE	(Reserved).			
FF	Benzene Waste Operations.		X	

(iii) Hawaii. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X
B	Radon Emissions From Underground Uranium.	
C	Beryllium.	
D	Beryllium Rocket Motor Firing.	
E	Mercury	X
F	Vinyl Chloride.	
G	(Reserved).	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.	
L	Benzene Emissions from Coke By-Product Recovery Plants.	
M	Asbestos.	
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.	
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	
Q	Radon Emissions From Department of Energy Facilities.	
R	Radon Emissions From Phosphogypsum Stacks.	
S	(Reserved).	
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	
U	(Reserved).	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings.	
X	(Reserved).	
Y	Benzene Emissions From Benzene Storage Vessels.	
Z–AA	(Reserved).	
BB	Benzene Emissions From Benzene Transfer Operations	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
CC–EE	(Reserved).	
FF	Benzene Waste Operations	X

* * * * *

[FR Doc. 02–702 Filed 1–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–3021, MM Docket No. 01–349, RM–10350]

Radio Broadcasting Services; Boscobel, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Starboard Broadcasting, Inc. proposing the allotment of Channel 244C3 at Boscobel, Wisconsin, as the community's first local transmission service. The coordinates for Channel 244C3 at Boscobel are 43–08–04 and 90–42–19. The channel can be allotted to Boscobel without a site restriction.

DATES: Comments must be filed on or before February 19, 2002, and reply comments on or before March 6, 2002.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Stephen Gajdosik, Vice President, Starboard Broadcasting, Inc., 2470 Crooks Avenue, Kaukauna, Wisconsin 54130.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–349, adopted December 19, 2001, and released December 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint @aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Radio 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 Wisconsin, is amended by adding Boscobel, Channel 244C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–786 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98–204, FCC 01–363]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The document proposes to retain the Commission's ban on discrimination and to require broadcasters and cable entities to maintain an EEO program that would achieve broad and inclusive outreach in recruitment to ensure a fair opportunity for all job seekers; and provide administrative relief to small entities. The intended effect is to invite comments on all aspects of the Commission's proposals.

DATES: Comments are due March 15, 2002 and reply comments are due April 15, 2002. Written comments by the public on the proposed information collections are due March 15, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before March 15, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington DC 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: EEO Staff, Mass Media Bureau, (202) 418–1450. For additional information concerning the information collection(s), contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Notice of Proposed Rule Making (Second NPRM) in MM Docket No. 98–204, FCC 01–363. This Second NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Synopsis of Second Notice of Proposed Rule Making

1. This Second NPRM adopts new broadcast and cable EEO rules and policies consistent with the decision of the Court in *MD/DC/DE Broadcasters Association* v. *FCC,* 236 F.3d 13, rehearing denied, 253 F.3d 732 (D.C. Cir. 2001), petition for cert. filed, *MMTC* v. *MD/DC/DE Broadcasters Association,* No. 01–639 (October 17, 2001) (Association), which held that the EEO program requirements of the Commission's broadcast EEO rule were, in part, unconstitutional and therefore vacated the entire rule because the Court found that portions of the rule that it did not find unconstitutional could not be severed from the unconstitutional portion. The broadcast EEO rule was adopted by the *Report and Order* in MM Docket Nos. 98–204 and 96–16, 15 FCC Rcd 2329 (2000) (*Report and Order*), recon. denied, 15 FCC Rcd 22548 (2000), 47 CFR 73.2080. The *Report and Order* also adopted EEO rules for cable entities.

2. The program initiatives of the EEO rule adopted by the Report and Order required that broadcasters widely disseminate information about job openings to ensure that all qualified applicants, including minorities and women, would be able to compete for jobs in the broadcast industry. The EEO rule did not specify the number or type of recruitment sources to be utilized in recruitment efforts. Rather, the rule afforded broadcasters two options from which they could choose, referred to as Option A and Option B.

3. Option A required broadcasters to comply with two supplemental recruitment measures, in addition to the general requirement to recruit for all vacancies so as to achieve broad outreach. First, they were required to provide notice of openings to recruitment organizations that requested such notice. Second, they were required to engage in a certain number of outreach efforts beyond the traditional recruitment that occurs in response to individual vacancies, such as job fairs, internship programs, training programs, mentoring programs, and interaction with educational and community groups. Broadcasters who chose Option A were required to retain records sufficient to document their recruitment efforts and to document that they performed the supplemental recruitment measures. In addition, in order to permit an assessment of their program, they were required to track the recruitment sources of their interviewees and hires.

4. Option B also included the general requirement to recruit for all vacancies but afforded broadcasters the opportunity to design their own program for achieving broad outreach without utilizing the supplemental recruitment measures specified under Option A. Broadcasters electing Option B were required to maintain records documenting their recruitment efforts. In order to permit a meaningful assessment of the success of the program in achieving broad outreach, broadcasters using Option B were required to track the recruitment source, racial/ethnic status, and gender of applicants.

5. The Court in *Association* found that Option B violated the constitutional requirement of equal protection because it created pressure on broadcasters to make greater efforts to recruit for minorities with the result that some nonminority prospective applicants would be deprived of notice. The Court did not find any constitutional infirmity with Option A. However, it concluded that it was unable to sever the invalid Option B from the EEO rule, leaving a rule based only on Option A. Nonetheless, the Court indicated that the Commission could conduct a renewed rulemaking. Thus, this Second NPRM develops EEO requirements for broadcasters and cable entities that are consistent with the Court's decision in *Association* by requesting comments on proposals that generally follow those previously adopted under the former Option A.

Paperwork Reduction Act

This Second NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Second NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Second NPRM; OMB notification of action is due March 15, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Second NPRM—Review of the Commission's Broadcast and Cable EEO Rules and Policies.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 251—16,425.

Estimated Time Per Response: 10 minutes—42.0 hours.

Total Annual Burden: 394—528,238.

Total Annual Costs: $0—$100,000.

Needs and Uses: This Second NPRM seeks comments on a new broadcast EEO rule and policy consistent with the decision in *Association* wherein the court found unconstitutional one of two options for achieving broad outreach. Adoption of any revised EEO rule or policy would likely require changes to the following information collections: 3060–0095 Annual Employment Report—Cable Television (FCC 395–A); 3060–0113 Broadcast EEO Program Report (FCC 396); 3060–0120 Broadcast EEO Model Program Report (FCC 396–A); 3060–0212 § 73.2080 EEO Program; 3060–0349 Cable EEO Requirements (§§ 76.73, 76.75, 73.79, 76.1702; 3060–0390 Broadcast Station Annual Employment Report (FCC 395–B); 3060–0574 MVPD Annual Employment Report (FCC 395–M); and 3060–0922 Broadcast Statement of Compliance (FCC 397). Any revisions to these collections would be subject to OMB review and approval at the final rule stage.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second NPRM. *See* 5 U.S.C. 603. [The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Second NPRM. The Commission will send a copy of the Second NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Second NPRM and IRFA (or summaries thereof) will be

published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rule Changes

This Second NPRM requests comments concerning a new broadcast equal employment opportunity rule and policies consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Association.* The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the *Report and Order*, 47 CFR 73.2080. The Court found the option invalid because nonminority job applicants were less likely to receive notification of job openings under that recruitment option. The Court further found that the other option provided by the EEO rule, although not invalid, could not be severed from the one unconstitutional option and therefore it vacated the entire rule. The outreach provisions adopted by the *Report and Order* were designed to ensure that all persons have the opportunity to participate in the broadcasting industry by requiring that broadcasters engage in broad and inclusive outreach in connection with their hiring efforts.

Because the Commission continues to believe in the importance of achieving broad and inclusive outreach and that this can be achieved in a manner consistent with the Court's decision, we are issuing this Second NPRM for the purpose of developing EEO rules to replace those found unlawful by the Court. In addition to considering a new broadcast EEO rule, we will also consider new rules applicable to cable entities, including multichannel video program distributors (MVPDs). Thus, in the *Report and Order,* we adopted EEO requirements applicable to cable entities which were generally the same as the requirements applicable to broadcasters, except where necessary to comply with statutory requirements applicable only to cable entities. The Court in *Association* did not address our requirements applicable to cable entities. However, it remains our belief that the EEO requirements for cable entities should, to the extent possible, conform to the requirements applicable to broadcasters. The Court in *Association* did not address those aspects of our broadcast and cable EEO rules that prohibit discrimination in hiring practices and we do not believe the Court intended to invalidate such requirements. The Second NPRM accordingly proposes to readopt our antidiscrimination requirements.

Hence, the Second NPRM seeks comment on proposed EEO rules and policies for broadcast and cable entities, including multichannel video programming distributors. The rules are designed to replace existing requirements that were found to be unconstitutional in part by the Court in *Association*, or are, in light of the Court's decision, constitutionally suspect in part. Specifically, we request comment on our proposal to retain the anti-discrimination prong of our EEO rules. In addition, we request comment on proposals to require broadcasters and cable entities to establish and maintain an EEO program that would emphasize recruitment outreach; discourage entities from preferring members of any racial, ethnic, or gender group in hiring or recruitment practices; and provide administrative relief to small entities that meet proposed qualifying factors.

B. Legal Basis

Authority for the actions proposed in this Second NPRM may be found in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

C. Recording, Recordkeeping, and Other Compliance Requirements

As noted, the purpose of this rule making is to replace our prior EEO rule that was found to be unconstitutional in part by eliminating that portion determined to be unconstitutional. Hence, this Second NPRM anticipates that any recording, recordkeeping and compliance requirements of the new rule will not exceed those provided for in the former rule.

Specifically, the Second NPRM proposes that some EEO materials be kept in the public inspection file, that all broadcasters and cable entities adhere to the EEO rules' general anti-discrimination provisions, and that broadcasters and cable entities widely disseminate information concerning job vacancies.

The Second NPRM also proposes that broadcasters and cable entities undertake two supplemental recruitment measures described herein. As proposed, the first supplemental recruitment measure would require broadcasters and cable entities to provide notification of full-time job vacancies to any requesting organization if the organization regularly distributes information about employment opportunities or refers job seekers to employers. Depending on the size of a station's staff, the second supplemental recruitment measure would require broadcasters to engage in at least four (for station employment units with more than ten full-time employees) or two (for station employment units with five to ten full-time employees) of the following menu options every two years: participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions; hosting of at least one job fair; co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities; participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues (including conventions, career days, workshops, and similar activities); establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment; participation in job banks, internet programs, and other programs designed to promote outreach generally; participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting; establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions; establishment of a mentoring program for station personnel; participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting; sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting; listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities; and participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities. Cable employment units with more than ten full-time employees would engage in at least two options from the supplemental recruitment measures menu every year and cable employment units with six to ten full-time employees would engage in at least one option every year.

In addition, the Second NPRM proposes that broadcasters and cable entities retain records to demonstrate that they have recruited for all full-time

permanent positions. Under the proposal, such recordkeeping would include: listings of all full-time vacancies filled, listings of recruitment sources, the address/contact person/telephone number of each recruitment source, dated copies of advertisements and other documentation announcing vacancies, listings of those organizations which requested notification of vacancies, the total number of interviewees for each vacancy, the date of each hire, and proof of participation in menu options. The Second NPRM notes that our former rule required licensees and cable entities to keep track of the referral source of all interviewees and hirees. The Second NPRM requests comments as to whether this information is necessary in order to validate that outreach is actually effective, or if other information should be required. The Second NPRM further proposes that broadcasters' records be maintained until grant of the renewal application for the term during which the hiring activity occurred. Cable entities would retain their records for a minimum of seven years.

The Second NPRM also proposes that stations and cable employment units place annually the following EEO records in their local public inspection file: listings of full-time vacancies filled, recruitment sources used for each vacancy during the preceding year, the address/contact person/telephone number of each recruitment source, an indication of the organizations requesting notification, the total number of persons interviewed for full-time vacancies during the preceding year, and a brief description of the menu option items undertaken during the preceding year. The Second NPRM asks if stations and cable employment units should track the recruitment source of all full-time hirees and/or interviewees referred by each recruitment source for a vacancy. Such information would also be updated in the local public inspection file on an annual basis. Further, under the proposal, station units are to retain the materials in their file until final action has been taken on the station's next license renewal application, and cable entities are to retain their materials for a period of five years.

Further, the Second NPRM proposes that most broadcasters submit the contents of their station's EEO public inspection file to the FCC as part of their renewal application and midway through the license term for the Commission's mid-term review (for those subject to mid-term review), and that cable entities with six or more full-time employees submit copies of their EEO public inspection file to the Commission every five years. However, broadcasters would limit their submissions to cover only the last 12 months of EEO activity.

Also, the Second NPRM proposes that broadcasters file a Broadcast Mid-Term Report (Form 397) and place a copy of the Report in the public inspection file. Broadcasters would also continue placing a copy of Form 396 (Broadcast EEO Program Report) in the public inspection file. However, broadcasters would no longer be required to place a copy of their station's Form 395–B (Broadcast Station Annual Employment Report) in the public file. Cable employment units would continue placing a copy of Forms 395–A (Cable Television Annual Employment Report) or 395–M (Multi-Channel Video Program Distributor Annual Employment Report) in their public file.

The Second NPRM proposes that all broadcasters and cable entities, with the exception of small entities, comply with these recordkeeping and recording requirements. The proposed exception for small businesses would provide them with some relief of any disparate recordkeeping and reporting costs.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. Definition of a ''Small Business''

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 603(b)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), 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**.'' 5 U.S.C. 601(3). The new rules would apply to broadcast stations and cable entities, including MVPDs.

2. Issues in Applying the Definition of a ''Small Business''

We could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the

power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

The rules to be adopted pursuant to this Second NPRM will apply to television and radio stations. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513120. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1, Appendix A–9 (1995). Included in this industry are commercial, religious, educational, and other television stations. *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC code 4833, now NAICS code 51312) as: ''Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.'' Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. 1992 Census, Series UC92-S–1, at Appendix A–9. Separate establishments primarily engaged in producing taped television program materials are classified under other NAICS numbers. *Id.*; formerly SIC code 7812 (Motion Picture and Video Tape Production) (NAICS code 512110); formerly SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs) (NAICS codes 512110, 512191, 512290).

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. That number has remained fairly constant as indicated by the approximately 1,686 operating full-service television broadcasting stations in the nation as of September 2001. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001). For 1992[1] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. (The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the proposed rules will affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. (We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 2001 total of 1,686 TV stations to arrive at stations categorized as small businesses.) These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In August 1998, minorities owned and controlled 32 (2.6%) of 1,209 commercial television stations in the United States. *Minority Commercial Broadcast Ownership in the United States,* U.S. Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (August 1998). (MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. The minority groups included in this report are Black, Hispanic, Asian, and Native American.) According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States. *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business,* WB87–1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, the Commission recently amended its Annual Ownership Report Form 323 to require information on the gender and race of broadcast license owners in future filings. *See 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, Report and Order,* MM Docket No. 98–43, 13 FCC Rcd 23,056 (1998).

The proposed rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. 13 CFR 121.201, NAICS codes 513111 and 513112. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. *Id.* The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. (The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.) Official Commission

[1] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, note 53, III.

records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of September 2001, official Commission records indicate that 13,012 radio stations are currently operating. FCC News Release, Broadcast Station Totals as of September 30, 2001 (released October 30, 2001).

The rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201 (NAICS codes 513210 and 513220). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), local multipoint distribution service (LMDS), satellite master antenna systems, and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities.

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 6393 (1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' 47 U.S.C. 543(m)(2). The Commission has determined that there are 67,700,000 subscribers in the United States. *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01–158 (January 24, 2001). Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: MDS involves a variety of transmitters, which are used to relay programming to the home or office. For purposes of this item, MDS includes the single channel Multipoint Distribution Service (MDA) and the Multichannel Multipoint Distibution Service (MMDS). The Commission has defined ''small entity'' for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 1.2110(a)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995). These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $11 million or less). *See* 13 CFR 121.201. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. *Id.* A BTA is the geographic area by which the MDS is licensed. *See* Rand McNally, *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business. There are approximately 2,000 MDS/MMDS/LMDS stations currently licensed. We conclude that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

LMDS: The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Local Multipoint Distribution Service, Second Report and Order,* 12 FCC Rcd 12545 (1997). An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (January 6, 1998). There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

DBS: Because DBS provides subscription services, it falls within the SBA-recognized definition of ''Cable

and Other Pay Television Services.'' 13 CFR 121.201, NAICS codes 513210 and 513220. This definition provides that a small entity is one with $11.0 million or less in annual receipts. *Id.* Currently, there are four DBS providers, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. We base these estimates on a compilation performed by the Equal Employment Opportunity Staff, Mass Media Bureau, FCC. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 MVPD employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

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

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 (among others): (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. 5 U.S.C. 603(c).

One of the alternatives that this Second NPRM proposes is that broadcasters with station employment units of five to ten full-time employees be provided some relief from EEO program requirements, and that station employment units of fewer than five full-time employees be exempt altogether, with the exception that all broadcasters be subject to the nondiscrimination requirement and report any employment discrimination complaints filed against them. In addition, cable employment units, including MVPD employment units, employing six to ten full-time employees would be provided some relief from the proposed EEO program requirements, and cable employment units with fewer than six full-time employees would not be required to demonstrate compliance with the proposed EEO program requirements. We consider this alternative because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. Furthermore, these proposed rules streamline and clarify recordkeeping requirements, thereby benefiting all entities, including those with fewer employees. It is our belief that the proposed alternative balances the importance of deterring discrimination and achieving broad outreach in broadcast and cable employment practices against the need to maintain minimal regulatory burdens and the ease and clarity of administration.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

The proposed rules do not overlap, duplicate or conflict with any other rules.

List of Subjects

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–870 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 95

[WT Docket No. 01–339; FCC 01–366]

Garmin International, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Notice of Proposed Rule Making (NPRM),* the FCC proposes to amend Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. These rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons.

DATES: Written comments by the public on the proposed are due on or before February 13, 2002 and reply comments are due on or before February 28, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room TW–B204, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Cross, Wireless Telecommunications Bureau, at (202) 418–0691.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 01–366, adopted on December 12, 2001 and released on December 20, 2001. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. This *NPRM* seeks comment on a proposal to amend §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. In its Petition, Garmin International, Inc. (Garmin) proposes to allow FRS units to transmit Global Positioning System (GPS) location information using emission type F2D in a digital data burst of not more than one second. Prior to the submission of the Petition, Garmin sought a waiver (Waiver Request) of §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to allow it to manufacture and market inexpensive handheld FRS transceivers capable of transmitting GPS location information on FRS channels. The Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted a one-year waiver of the

FRS Rules on September 29, 2000. On reconsideration, the Division extended the term of the waiver grant to two years, subject to the resolution of the Petition. We believe that these rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons. Therefore, we are initiating this rulemaking proceeding to propose a modification of the authorized emission types and permissible communications rules.

Procedural Matters

2. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

3. In this *NPRM,* we propose to authorize an individual to use a FRS unit to satisfy his or her need for non-voice communications for the purpose of providing information about the location of the FRS unit to other FRS units. The proposed rules apply exclusively to individuals who use FRS units. Such modification would be in the public interest because it would allow the public to take advantage of technological developments in equipment and service that have occurred since the authorization of the FRS, availability of equipment at reasonable prices, and the removal of Selective Availability from the GPS signal.

4. In addition, the rules proposed in this *NPRM,* potentially could affect manufactures of FRS units. Based on requests from manufactures for certification of FRS units, we believe that there are between 5 and 10 manufactures of FRS units and that none of these manufactures are small entities. The proposed rule change, if adopted, applies to individuals who use FRS units and does not result in a mandatory change in manufactured FRS units. Rather, the proposed rule change is permissive and would allow a manufacture, if it so chose, to include additional features in the FRS units it manufactured. Therefore, we certify that the proposals in this *NPRM,* if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

5. *Paperwork Reduction Analysis.* This *NPRM* does not contain either a proposed or modified information collection requirement.

6. *Ex Parte Rules Presentations.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

7. *Alternative formats.* Alternative formats (computer diskette, large print, audiocassette, and Braille) are available from Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.* This NPRM can also be downloaded at *http://www.fcc.gov/dtf.*

8. *Comment Dates.* pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments are due on or before February 13, 2002, and reply comments are due on or before February 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

10. Parties who chose to file by paper must file an original and four copies of each filing. The docket number appearing in the caption of this proceeding must appear in each comment or filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

11. For further information, contact the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233, or via e-mail at *fccinfo@fcc.gov.*

A. Ordering Clauses

12. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), notice is hereby given of proposed amendment to §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's Rules, 47 CFR 95.193(a), 95.193(b), and 95.631(d), as described above.

13. The Petition for Rulemaking, RM–10070, submitted by Garmin International, Inc., on December 26, 2000, is granted to the extent indicated herein.

14. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 95 as follows:

1. The authority citation for Part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 95.193 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use an FRS unit to transmit one-way voice or non-voice communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide

location information, make a voice page, or to conduct a brief test.

(b) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must be transmitted continuously no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking. The FRS unit may transmit digital data containing location information. Digital data transmissions shall not exceed one second, must be initiated by a manual key press, and shall be limited to no more than one digital transmission within a ten-second period.

* * * * *

3. Section 95.631 is amended by revising paragraph (d) to read as follows:

§ 95.631 Emission types.

* * * * *

(d) An FRS unit may transmit only emission type F3E or F2D. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications or digital data transmission of location information.

* * * * *

[FR Doc. 02–787 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF84

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Endangered Status of Two Plants, *Lomatium Cookii* (Cook's Lomatium) and *Limnanthes Floccosa* ssp. *Grandiflora* (Large-Flowered Wooly Meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) as endangered species under the Endangered Species Act of 1973, as amended (Act). We are re-opening the comment period to provide the public an opportunity to review additional information on the status, abundance, and distribution of these plants, and to request additional information and comments from the public regarding the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period; all comments will be fully considered in the final rule.

DATES: We will accept public comments until March 15, 2002.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs or Rollie White at the above address, phone: 503/231–6179, facsimile: 503/231–6195.

SUPPLEMENTARY INFORMATION:

Background

Lomatium cookii (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) are two plants that inhabit seasonally wet habitats known as vernal pools in the Agate Desert, an area of approximately 83 square kilometers (32 square miles) north of Medford, Jackson County, Oregon. Cook's lomatium also occurs on seasonally wet soils in the adjacent county to the west, Josephine County, Oregon. The continued existence of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* is endangered primarily by destruction of their specialized vernal pool habitat by competition with non-native plants and industrial and residential development, including road and powerline construction and maintenance. Agricultural conversion and off-road vehicle (ORV) use also contribute to destruction of the habitat required by these plants. *Lomatium cookii* sites in Josephine County are additionally threatened by habitat alteration associated with gold mining, certain proposed timber projects, and woody species encroachment resulting from fire suppression.

On May 15, 2000, the Service published a proposed rule to list *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as endangered species and requested public comment for 60 days (65 FR 30941). On August 28, 2001, Siskiyou Regional Educational Project filed a citizen suit alleging that the Service had failed to make a timely final determination on the listing and critical habitat designation of these two plants, consistent with the time frames set forth in section 4 of the Act (*Siskiyou Regional Educational Project* v. *Norton,* Civil No. 01–1208–KI (D. Ore). We entered into a settlement agreement with the plaintiff and agreed to submit a final listing decision for publication in the **Federal Register** on or before October 31, 2002. By this notice, the Service is seeking updated information regarding the status, abundance, and distribution of these plants, as well as providing updated information now in the possession of the Service regarding the status of these two plants.

Current Status

The proposed rule published in May of 2000 did not contain data from surveys for these plants that had been conducted one month prior to publication of the proposed rule, during April of 2000 (David Evans and Associates 2000). Additional survey work was also conducted for both species in April of 2001. These data are provided below.

Each year, plant populations exhibit some natural variation in numbers, related primarily to temperature and rainfall conditions for that year. In general, numbers of annual plants, such as *Limnanthes floccosa* ssp. *grandiflora* may fluctuate more widely than those of perennial plants, such as *Lomatium cookii.* The year 2000 was a banner year for *Limnanthes floccosa* ssp. *grandiflora* populations due to the wet conditions that prevailed that year, but in 2001, a dry year, population numbers of this plant plummeted in many areas. For example, on a protected site owned by The Nature Conservancy (TNC), one *Limnanthes floccosa* ssp. *grandiflora* occurrence declined from 68,000 in 2000 to 39,000 in 2001. A site owned by the City of Medford, contained some 10,000 *Limnanthes floccosa* ssp. *grandiflora* individuals in the year 2000, while only 112 individuals were noted at this site in 2001 (D. Borgias, TNC, pers. comm. 2001). Year-to-year changes of this magnitude may be within the normal range of variation for this annual plant. However, it is possible that a number of consecutive drought years could eliminate some populations of *Limnanthes floccosa* ssp. *grandiflora.* In contrast, numbers of *Lomatium cookii* in the Agate Desert were generally stable or slightly increased from the year 2000 to 2001 (D. Borgias, TNC, pers. comm. 2001).

The Service now possesses information on three status changes that

would be considered outside the natural range of year-to-year variation for these plants and that was not available to us during development of the proposed rule for these plants. Two of these involve increased population sizes at historical *Lomatium cookii* sites. One of these sites, on private land, was believed to contain some 6,000 plants historically. Surveys in 2000 and 2001 revealed an estimated 500,000 flowering individuals. Another population, located on Medford airport property, that was previously estimated at some 1,000 plants, was found in 1999 to contain over 5,000 flowering *Lomatium cookii* plants. However, this larger population was cut in two last year by development of a new taxiway at this airport (K. O'Hara, David Evans & Associates, pers. comm. 2001). The third status change is that in the year 2000, *Limnanthes floccosa* ssp. *grandiflora* was discovered at a new location. This occurrence, on private land, comprised approximately 1,000 flowering individuals.

The 2000–2001 observations of these two vernal pool plant species must be considered within the context of the status and trends of their habitat overall. Recent studies of the Agate Desert vernal pool hydrology and vegetation indicate that no intact vernal pool habitat remains (ONHP 1997, 1999). The latter study (ORNP 1999) indicates that the highest quality remaining Agate Desert vernal pool habitat, that with intact hydrology and altered vegetation, is now present on an approximately 17.6 percent of the area. This is a decrease from the earlier study (ONHP 1997), cited in the May, 2000, **Federal Register** proposal, which estimated that this highest quality remaining habitat occurred on 23.1 percent of the area. This reported decrease in the amount of best available habitat is partially due to better-refined mapping techniques, but there is evidence that additional land leveling also occurred between the two studies (ONHP 1999). Both reported and unreported fills of Agate Desert vernal pool wetlands are occurring continually (C. Tuss USFWS biologist, pers. comm. 2001). ONHP (1999) reports that over 19 percent of Agate Desert vernal pool habitat has been leveled, and development (structures, roads, and other impermeable surfaces) has occurred on an additional 41 percent of this area (ONHP 1999). Thus, over 60 percent of the habitat of these plants in the Agate Desert has been destroyed, and none of the remaining habitat has escaped the invasion of weedy competitors. This compares with just under 60 percent habitat destruction reported in ONHP 1997 and in the proposed rule (65 FR 30941).

Recent evidence also indicates that non-native annual grasses are a greater problem than previously believed for *Lomatium cookii,* particularly in the Agate Desert. Unlike native perennial bunchgrasses that originally occupied the area, annual grasses die back each year, creating a buildup of thatch from the dead leaves that interferes with germination of *Lomatium cookii* seeds. Current observations indicate that without control of annual grasses through mowing, grazing or prescribed burns, *Lomatium cookii* populations tend to decrease over time, and could be extirpated within a relatively short time frame, due to this competition with non-native grasses (D. Borgias, TNC, pers. comm. 2001). In many cases, non-native plants have been purposefully planted, for livestock and other reasons, in the Agate Desert. For example, the Ken Denman Wildlife Reserve, encompassing some 720 hectares (1,780 acres) of Agate Desert land, is managed by the State primarily for waterfowl production. Much of this Reserve has been covered with log deck debris, plowed in strips and planted with non-native wildlife food plants (Brock 1987; J. Jacobs, pers. obs. 2000).

Populations of *Lomatium cookii* in Josephine County are becoming even more highly threatened by ORV use than they were at the time of the proposal. Over the past 2 years, gates erected by the Bureau of Land Management (BLM) to direct ORV traffic away from *Lomatium cookii* habitat have been repeatedly vandalized, and the intrusion into these areas continues. Particularly in the springtime, when the ground is wet and muddy (and *Lomatium cookii* plants are flowering), ORVs cause major rutting and disruption of *Lomatium cookii* habitat (L. Mazzu, BLM botanist, pers. comm. 2001).

Considering the above-noted population changes of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in the Agate Desert over the past 2 years in light of historic loss of habitat (65 FR 30941) and ongoing threats to these plants and their habitat, we conclude that the best available information still indicates both are in danger of extinction throughout all or a significant portion of their range, fitting the definition of endangered under the Act.

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 State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. (2) You may hand-deliver comments to our Oregon Fish and Wildlife 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 proposed rule is available on the Internet at our Web site *www.fws.gov* or by writing to the State Supervisor at the address under (1) above.

References Cited

David Evans and Associates. 2001. Agate Desert vernal pool surveys. (prepared for: Rogue Valley Council of Governments, Jackson County, Oregon), 16+ pp.

Oregon Natural Heritage Program. 1997. Agate Desert vernal pool habitat: Preliminary mapping and Assessment. Report to Oregon Division of State Lands, Contract No. 10738–369, 23+pp.

Oregon Natural Heritage Program. 1999. Assessment and map of the Agate Desert vernal pool ecosystem in Jackson County, Oregon: March 1998 imagery revision. Report to U.S. Fish and Wildlife Service, December 6, 1999, 15+pp.

Author

The primary author of this notice is Judy Jacobs, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 2001.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–812 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–01–006]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's view, based on a review by the Agricultural Marketing Service (AMS), that it is not necessary to conduct a referendum among producers and importers on continuation of the 1990 amendments to the Cotton Research and Promotion Act (Act). The 1990 amendments require the Secretary of Agriculture, once every five years, to conduct a review to determine whether to hold a referendum. The two major changes to the Cotton Research and Promotion Program made by the 1990 amendments were the elimination of assessment refunds to producers and a new assessment levied on imported cotton and the cotton content of imported products. Although USDA is of the view that a referendum is not needed, it will initiate a sign-up period as required by the Act, to allow cotton producers and importers to request a referendum.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Cotton Research and Promotion Staff, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224, Telephone (202) 720–2259, Facsimile (202) 690–1718 or e-mail *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION: In July 1991, the Agricultural Marketing Service (AMS) implemented the 1990 amendments to the Cotton Research and Promotion Act (Act). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons to be determined by the Secretary who import cotton or cotton products into the United States (U.S.) and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary of Agriculture; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

Results of the July 1991 referendum showed that of the 46,220 valid ballots received; 27,879 or 60 percent of the persons voting, favored the amendments to the Cotton Research and Promotion Order (Order), and 18,341 or 40 percent opposed the amendments. AMS developed implementing regulations for the import assessment effective August 1, 1992, the elimination of the producer refund effective September 1, 1991, and provided for importer representation on the Cotton Board effective January 1, 1993. The addition of these new members brought the Cotton Board's membership to 25 (21 producer members and 4 importer members).

On October 8, 1996, USDA issued the results of the first five-year review of the Cotton Research and Promotion Program. USDA announced its view not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772). During the period of January 15 through April 14, 1997, the Department conducted a sign-up period for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of the sign-up period did not meet the criteria as established by the Act for a continuance and therefore, a referendum was not conducted.

The Department has prepared a second report that describes the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those receiving its benefits. The report is based on a review conducted by AMS to determine whether to hold a referendum of producers and importers on the continuation of the 1990 Act amendments. The review report is available upon written request to the Chief of the Cotton Research and Promotion Staff at the address provided above. Comments were solicited from all interested parties including from persons who pay the assessments as well as from organizations representing cotton producers and importers (66 FR 16440; March 26, 2001). Economic data was also reviewed in order to report on the general climate of the cotton industry. Finally, a number of independent sources of information were reviewed to help identify perspectives from outside the program including the results of independent program evaluations assessing the effects of the Cotton Research and Promotion Program activities on demand for Upland cotton, return-on-investment to cotton producers, the net value to companies who import cotton products and raw cotton, and the overall rate-of-return and qualitative benefits and returns associated with the Cotton Research and Promotion Program.

The review report cited that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a general consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from two independent evaluations support this conclusion. Industry comments cited examples of how the additional funding has yielded benefits by increasing the demand and consumption for cotton.

USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Cotton Research and Promotion Order although some program participants support a referendum. Therefore, USDA will allow all eligible persons to request the conduct of a continuance referendum on the 1990 amendments through a sign-up period. Eligible producers and importers may sign-up to request such a referendum at the county office of the Farm Service Agency (FSA), or by mailing such a request to FSA. The Secretary will conduct a referendum if requested by 10 percent (4,622) or more

of the number of cotton producers and importers voting in the most recent referendum (July 1991), with not more than 20 percent of such request from producers in one state or importers of cotton.

Currently, procedures for the conduct of a sign-up period appear at 7 CFR 1205.10–1205.30. These procedures will be updated as appropriate prior to the beginning of the sign-up period.

Authority: 7 U.S.C. 2101–2118.

Dated: January 9, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–910 Filed 1–10–02; 8:54 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Publication of Depreciation Rates

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the depreciation rates for telecommunications plant for the period ending December 31, 2000.

DATES: These rates are effective for the period beginning January 1, 1999 and ending December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: Section 206(a)(3) of the Rural Electrification Act of 1936 requires RUS to annually determine and publish average depreciation rates used by its borrowers for the purposes of depreciating telecommunications plant. The following chart provides those rates, compiled by RUS, for the reporting period ended December 31, 2000:

AVERAGE DEPRECIATION RATES OF RUS BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDED DECEMBER 31, 2000

Telecommunications plant category	Depreciation rate (percent)
1. Land and Support Assets	
a. Motor vehicles	15.00
b. Aircraft	10.00

AVERAGE DEPRECIATION RATES OF RUS BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDED DECEMBER 31, 2000—Continued

Telecommunications plant category	Depreciation rate (percent)
c. Special purpose vehicles	12.00
d. Garage and other work equipment	10.00
e. Buildings	3.01
f. Furniture and office equipment	10.00
g. General purpose computers	18.57
2. Central Office Switching	
a. Digital (a)	8.33
b. Analog & electro-mechanical	10.00
c. Operator systems	8.61
d. Radio systems	9.40
e. Circuit equipment (b)	10.00
3. Information Origination/Termination	
a. Station apparatus	11.90
b. Customer premises equipment	10.00
c. Large private branch exchanges	12.50
d. Public telephone terminal equipment	11.00
e. Other terminal equipment	10.00
4. Cable and Wire Facilities	
a. Aerial cable-Poles	6.50
a. Aerial cable-metal	6.00
b. Aerial cable-fiber	5.00
c. Underground cable-metal	4.96
d. Underground cable-fiber	5.00
e. Buried cable-metal	5.00
f. Buried cable-fiber	5.00
g. Conduit systems	3.00
h. Other	7.12

Dated: January 8, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–878 Filed 1–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: On August 8, 2001, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy (66 FR 41517). This review covers one manufacturer/exporter of the subject merchandise (Acciai Speciali Terni, S.p.A. (''AST'')). The period of review (''POR'') is January 4, 1999, through June 30, 2000. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0165.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On August 8, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 41517 (August 8, 2001). In response to the Department's invitation to comment on the preliminary results of this review, AST and petitioners filed their case briefs on September 17, 2001, and their rebuttal briefs on October 1, 2001. AST and petitioners, Allegheny Ludlum Corporation, AK Steel Corporation, J&L Speciality Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc., submitted requests for a hearing on September 17, 2001. On October 4,

2001, AST and petitioners withdrew their request for a hearing. On November 29, 2001, the Department extended the final results of review by 30 days. *See Notice of Extension of the Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 66 FR 59568 (November 29, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Period of Review

The POR is January 4, 1999 to June 30, 2000.

Scope of Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils (''SSSS''). Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36''' is a trademark of Imphy, S.A.

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' [6] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' [7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 7, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation:

- We recalculated home market imputed credit expenses based on the weighted average of the revised short-term interest rate (*i.e.,* exclusive of foreign currency borrowings) as of September 30, 2000, and the short-term interest rate as of September 30, 1999.

This change is discussed in the relevant section of the *Decision Memorandum.* We have made no other changes to the margin calculation.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer/exporter/reseller	Margin (percent)
AST	0.66

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. Where the importer-specific assessment rate is above *de minimis,* we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 11.23 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

[7] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

[8] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Classification of U.S. Sales
Comment 2: CEP Offset
Comment 3: Major Inputs from Affiliated Suppliers
Comment 4: Home Market Short-Term Interest Rate
Comment 5: U.S. Insurance Revenue

[FR Doc. 02–887 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan: Notice of Revocation of Antidumping Duty Order and Termination of Antidumping Duty Administrative Reviews and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on the finding of the U.S. International Trade Commission, the Department of Commerce is revoking the antidumping duty order covering static random access memory semiconductors from Taiwan and terminating the antidumping duty administrative and the new shipper reviews.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the notice of its final less-than-fair-value determination on static random access memory semiconductors (SRAMs) from Taiwan on February 23, 1998. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (Feb. 23, 1998). On April 9, 1998, the U.S. International Trade Commission (ITC) made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of the subject merchandise. The Department published the notice of its amended final affirmative less-than-fair-value determination on SRAMs from Taiwan on April 16, 1998. See *Notice of Amended Final Determination and Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 18883 (April 16, 1998). Finally, the Department published the amended antidumping order covering the subject merchandise on April 22, 1998. *See Notice of Amended Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 19898 (April 22, 1998).

Following publication of the amended antidumping duty order, the Taiwan Semiconductor Industry Association, an interested party, challenged the ITC's final affirmative determination of material injury in an action in the U.S. Court of International Trade (CIT). In two subsequent decisions, the CIT remanded the case to the ITC. *See Taiwan Semiconductor Industry Association, et al.* v. *United States,* 59 F. Supp. 2d 1324, 1336 (CIT 1999); *see also Taiwan Semiconductor Industry Association* v. *United States,* 93 F. Supp. 2d 1283 (CIT 2000). On the second remand, the ITC determined that an industry in the United States is not being materially injured, nor is it threatened with material injury, by reason of imports of the subject merchandise. The CIT affirmed the ITC's second remand determination on August 29, 2000. *See Taiwan Semiconductor Industry Association et al.* v. *United States,* 118 F. Supp. 2d 1250 (CIT 2000).

The domestic industry (Micron Technology) appealed the CIT decision to the CAFC. The CAFC issued a decision on September 21, 2001, affirming the CIT's decision upholding the ITC's second remand determination. *See Taiwan Semiconductor Industry Association,* 266 F. 3d 1339 (CAFC 2001). On November 5, 2001, the ITC filed a petition for rehearing at the CAFC. The CAFC denied this petition and issued its mandate on December 11, 2001.

Because this decision is now final, the ITC issued its final negative injury determination on December 28, 2001. *See Static Random Access Memory Semiconductors From Taiwan; Notice of Final Decision Affirming Remand Determination,* 67 FR 345 (January 3, 2002). Accordingly, we are revoking the order with respect to SRAMs from Taiwan. In addition, we are terminating the antidumping duty administrative reviews and the new shipper review of this order.

Scope of the Order

The products covered by this order are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this order includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this order does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.,* SRAMs soldered onto motherboards). The SRAMs within the scope of this order are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the

HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Determination To Revoke and Termination of Reviews

Because the ITC has issued a negative injury determination in the case of SRAMs from Taiwan, we are revoking the antidumping duty order on SRAMs from Taiwan. In addition, we are terminating the administrative reviews on SRAMs from Taiwan for the periods April 1, 1999, through March 31, 2000, and April 1, 2000, through March 31, 2001, and the new shipper review for the period April 1, 2000, through March 31, 2001. Accordingly, we will instruct the Customs Service to terminate suspension of liquidation on all entries of SRAMs from Taiwan from October 1, 1997, to the present and refund all duties deposited by importers plus interest where applicable pursuant to section 778 of the Act.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–888 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–2002–04]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002

AGENCY: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for applications.

SUMMARY: This notice serves the following purpose: To announce an opportunity for FY 2002 funding for the Global Carbon Cycle program area. Details of program emphases and topic areas can be found below in supplementary information, and in the GCC program information sheet at: *http://www.ogp.noaa.gov/mpe/gcc/index/html.*

Potential applicants should look at the specific wording of the initial **Federal Register** notice (cited below in SUPPLEMENTARY INFORMATION).

DATES: Letters of intent must be received at the Office of Global Programs (OGP) no later than February 15, 2002. Applicants who have not received a response to their letter of intent within two weeks should contact the Program Manager. Full proposals must be received at OGP no later than March 29, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under supplementary information. We anticipate that review of full proposals will occur during April and May 2002. September 1, 2002, should be used as the proposed start date on proposals.

ADDRESSES: Applications should be sent to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1210, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address, phone: (301) 427–2089 ext. 107, e-mail: *irma.dupree@noaa.gov.*

SUPPLEMENTARY INFORMATION: The notice describing the Program and funding area descriptions for FY 2002 was published on May 16, 2001 (66 FR 27070–75) in a notice entitled NOAA Climate and Global Change Program. The program description, background and requirements, as well as guidelines for applications are included in that notice and are not repeated here.

Global Carbon Cycle (GCC): The U.S. Interagency Carbon Cycle Science Program (CCSP) seeks to answer two overarching questions: (1) How large and variable are the dynamic reservoirs and fluxes of carbon within the Earth system, and how might carbon cycling change and be changed in future years, decades and centuries?, and (2) What are our options for managing carbon sources and sinks to achieve an appropriate balance of risk, costs, and benefits to society? For more detailed information on interagency priorities, science planning and agency roles, please consult the Internet at: *http://www.carboncyclescience.gov.*

NOAA's participation in the CCSP focuses on three main goals: (1) Quantifying spatial patterns and variability of carbon sources and sinks at global to regional scales; (2) Documenting the fate of anthropogenic CO_2 in the atmosphere and oceans; and (3) Improving future climate predictions by incorporating a dynamic understanding of the carbon cycle into models. To achieve these goals, the GCC program focuses on oceanic and atmospheric observations, process-oriented field studies and modeling. Information and current project abstracts can be found on the Internet at: *http://www.ogp.noaa.gov/mpe/gcc/index/html*

For FY 2002, GCC is soliciting projects in support of these goals in the following topic areas: (A) Global Distribution and Dynamics of Carbon Sources and Sinks; (B) Carbon budgets over North America and adjacent ocean basins; and (C) Synthesis, Modeling and Interpretative studies.

Global Distribution and Dynamics of Carbon Sources and Sinks: A variety of atmospheric, oceanic and terrestrial data has shown that the ocean and the terrestrial biosphere currently take up and store a significant portion of the carbon released to the atmosphere as a result of human activities. Preliminary progress has been made on locating sources and sinks of carbon on a regional basis and characterizing their magnitude and behavior over time. The results obtained thus far are at the limit of detection, however, and cannot be extended to many regions of the world due to lack of data.

In FY2002, GCC is seeking to augment the observational network in the ocean and atmosphere to fill in critical spatial and temporal gaps, as well as supporting research in network design, parameterization improvement, and data management.

Carbon Budgets over North America and Adjacent Ocean Basins: One region of uncertainty in the global carbon cycle budget is North America and the adjacent ocean basins. Recent studies indicate that the region may be currently taking up carbon at a significant level, however data and models needed to monitor budgets at the required spatial and temporal resolution are insufficient. Research advances now offer the opportunity to resolve the regional pattern of and mechanisms responsible for carbon dioxide uptake. In FY 2002, GCC is seeking to participate in a coordinated, interagency effort to conduct pilot observations, data assimilation, and network design in North America, and the North Atlantic and Pacific oceans.

Synthesis, Modeling and Interpretive Studies: In FY 2002, GCC is seeking

studies using empirical data and synthesized datasets, existing models, data assimilation techniques, and theory to advance the ability to quantify spatial patterns and variability of carbon sources and sinks at global to regional scales; document the fate of anthropogenic CO_2 in the atmosphere and oceans; and/or improve future climate predictions by incorporating a dynamic understanding of the carbon cycle into models.

For detailed information on the types of projects encouraged, please consult the GCC information sheet, posted on the Internet at: *http://www.ogp.noaa.gov/mpe/gcc/index.htm.* Contingent on available funding, projects awarded under this program announcement will be jointly supported by NOAA's Climate and Global Change and Climate Observations and Services Programs.

Contingent on available funding, this announcement serves as notice that NOAA and NSF will jointly consider proposals in FY 2002 to conduct a repeat hydrographic survey in support of the U.S. Carbon Cycle Science and CLIVAR Programs. Proposals for that topic should be submitted to NSF under Program Announcement NSF 02–016 via fastlane no later than March 5, 2002. Three paper copies should also be sent to NOAA/OGP by the same date.

For further technical information contact: Lisa Dilling at the above address, phone: (301) 427–2089 ext. 106, e-mail: *dilling@gp.noaa.gov*, or Krisa Arzayus, (301) 427–2089 ext. 183 e-mail: *Krisa.arzayus@noaa.gov* or see the web at: *http://www.lgp.noaa.gov/mpe/gcc/index/html.*

Other Requirements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreement contained in the Federal Register notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation.

Classification: It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.,* is not required and has not been prepared for this notice.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) control number. This notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046.

Authority: 49 U.S.C. 44720; 33 U.S.C. 883d, 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–898 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011102267–1267–01; I.D. No. 102301B]

Financial Assistance for Marine Mammal Stranding Networks Through the John H. Prescott Marine Mammal Rescue Assistance Grant Program

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

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS) (hereinafter ''we'' or ''us'') issues this document to solicit applications for Federal assistance under the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Stranding Grant Program). This document describes how you can apply for funding under the Program, and how we will determine which applications will be funded.

Under the Prescott Stranding Grant Program, we will provide financial assistance (up to $100,000 in Federal funds, with a 25 percent non-federal cost-sharing requirement) to eligible marine mammal stranding network participants for (1) the recovery or treatment of stranded marine mammals and (2) the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health. Financial assistance will also be given for facility operation costs that are directly related to (1) and (2), above. Proposals will be reviewed, ranked within Regional or National priority pools based on technical merit, and final selections will take into account other policy factors including level of priority, stranding needs, and equitable distribution of funds nationally.

DATES: We must receive your application by 5 p.m. (local time) March 15, 2002 in one of the offices listed in section I.I. (Applications Addresses) of this document. You must submit one signed original and two copies of the completed application (including supporting information). We will not accept facsimile or electronic applications.

ADDRESSES: You can obtain an application package from, and send your completed application(s) to, the NMFS Regional Administrator or the Protected Resources Office Director located at any of the offices listed in section I.I. Application Addresses of this document. You may also obtain the application package from the NMFS Protected Resources Home Page (*see* Section I.J. Electronic Access Addresses). However, we cannot accept completed applications electronically at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Coogan or Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program 301–713–2322 ext 144, or 178 or via e-mail: *PrescottGrantFR.comments@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

We are soliciting applications for Federal assistance pursuant to The Marine Mammal Rescue Assistance Act of 2000 which amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1) (hereafter referred to as the Prescott Stranding Grant Program). This document describes how you can apply for funding appropriated in fiscal years (FY) 2001 and 2002 under the Prescott Stranding Grant Program and how we will determine which applications will be funded.

A. Background

The Prescott Stranding Grant Program is conducted by the Secretary of Commerce to provide grants or cooperative agreements for eligible stranding network participants (see section I.E. of this document) for (1) recovery or treatment of marine mammals, (2) collection of data from living or dead stranded marine

mammals[1] for scientific research regarding marine mammal health and (3) for facilities operations costs that are directly related to these purposes. The Prescott Stranding Grant Program will be administered through the NMFS Marine Mammal Health and Stranding Response Program.

The Marine Mammal Health and Stranding Response Program (MMHSRP) was formalized in 1992 to fulfill the mandates of the Marine Mammal Health and Stranding Response Act, which amended the MMPA in 1992 (16 U.S.C. 1421). The MMHSRP was established to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events. Steps to achieve these goals, as well as the goals of the Prescott Stranding Grant Program, include the enhancement of rescue, care and treatment of stranded marine mammals; collection of life history data and other biomedical data that would allow comparison of the causes of illness or deaths in stranded marine mammals with physical, chemical, and biological environmental parameters; development of baselines of ''normal'' stranding causes and rates for rapid detection of unusual mortality events; collection of samples for archival for future retrospective studies on causes of mortality or illness; collection of tissues for archival in the National Marine Mammal Tissue (and Serum) Bank; and guidance for rescuing and rehabilitation of stranded marine mammals, collection of specimens, quality assurance, and analysis of tissue samples. Grant proposals based on the priorities specified in Section II of this document, will facilitate achievement of MMHSRP goals while fulfilling the purposes and requirements of the Prescott Stranding Grant Program.

It is NMFS's intent to also reserve a portion of funds to make emergency assistance available for catastrophic stranding events throughout the year on an as-needed basis. Responders to such stranding events should immediately contact their Regional Office (*see* section I.I. Application Addresses). Proposals will be required to follow the same application, merit review and selection process established under this notice.

B. Objectives

For the 2001/2002 Prescott Stranding Grant Program announced in this document, we have focused on the most important needs of the Marine Mammal Health and Stranding Response Program and the stranding network. These needs are reflected in the funding priorities listed in section II of this document. Successful applications will be those aimed at helping to support and increase the quality of care (recovery or treatment) for stranded marine mammals or to increase our understanding of the health of marine mammal populations in the wild, of trends in strandings, or of the causes of marine mammal mortalities, anomalies, and strandings in the wild. For data collection funding, efforts to increase our understanding of the correlation between physical, chemical, and environmental parameters and marine mammal health and strandings will be considered priorities.

C. Changes in the Implementation of the Prescott Stranding Grant Program Since the Posting of the Draft Implementation Plan

On June 7, 2001, a draft of our plan to implement the Prescott Stranding Grant Program was posted on our website, and comments were solicited from stranding network participants. As a result of comments received, a number of changes have been made that are reflected in this document. Therefore, we encourage you to read the entire document before preparing your application.

We have changed the maximum size of the Federal share of the grant to $100,000. We have clarified the eligibility criteria, and expanded the list of eligible applicants to include qualified Federal employees that work for agencies other than the Departments of Commerce or Interior, if those agencies have the authority to accept Federal assistance. We have reformatted the priority lists, and edited and added some priorities in response to public comments.

D. Funding

We expect to have approximately $7.1 million available for grant awards for grants under this solicitation. These funds include approximately $3.7 million appropriated for the 2001 fiscal year, and approximately $4 million appropriated for FY 2002 (Pub. L. 107–77). We will withhold $600,000 to make available for catastrophic stranding events that occur before the next grant cycle. The maximum Federal award for each project will be $100,000. For this solicitation, stranding network members may receive (as Principal Investigators) up to two grants for clearly separate projects. Researchers associated with the Network that are not authorized network participants (through a Letter of Agreement (LOA), MMPA section 109(h), or Northwest Contingency Plan designation) may receive only one grant (as Principal Investigator) under this solicitation if a network participant is a co-Investigator. However, we cannot guarantee that sufficient funds will be available to make awards for all proposals deserving funding.

Publication of this document does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

E. Eligibility

For this solicitation, you are eligible to apply for a grant or a cooperative agreement under the Prescott Stranding Grant Program if you are a U.S. ''stranding network participant'' that is not a Department of Commerce or Department of Interior employee. Specifically, you are eligible if:

1. You are an eligible stranding network participant that has been active over the past 3 years and are in good standing.[2] A network participant in

[1] For purposes of this document, a stranded marine mammal is a marine mammal in the wild that is (1) dead and on a beach, shore, or in waters under the jurisdiction of the United States or (2) is live and on a beach or shore of the United States and unable to return to the water, is in apparent need of medical attention, or is in waters under the jurisdiction of the United States but is unable to return to its natural habitat under its own power or without assistance.

[2] In good standing status will be determined by the Regional Stranding Coordinators during the initial screening for applicants' eligibility, and means:

a. All the Principal Investigators who hold or have held permits for scientific research, enhancement, or public display under the Marine Mammal Protection Act or Endangered Species Act must have fulfilled all permit requirements, including but not limited to reports and publications and must have fulfilled the terms of any enforcement actions. Adverse permit actions will be considered on a case by case basis in terms of meeting this requirement.

b. The stranding participant has complied with the terms and responsibilities of the Letter of Agreement listed below, or, for a participant authorized under MMPA section 109(h) or Northwest Region Contingency Plan participant, has met the following responsibilities consistently. These responsibilities include: timely response to reports of strandings, cooperation with state, local, and Federal officials, assisting local officials in the clean-up of beach areas resulting from collection or necropsy activities, collecting information or samples as requested by NMFS whenever possible, timely submission of reports to the Regional

Continued

good standing is an organization that has a current Letter of Agreement (LOA) for stranding response (either live or dead animal response) from a NMFS Regional Administrator; that has a current letter of designation from a NMFS LOA holder (designee); or you are a researcher collaborating with a network participant that is listed as a co-investigator on your application, you have remained active in network projects during the past 3 years, and you are holding a current letter from a Regional Administrator or the NMFS Office of Protected Resources authorizing you pursuant to 50 CFR 216.22 to collect materials from stranded marine mammals for research purposes.

2. You are a state, local, or eligible federal government employee participating pursuant to MMPA section 109(h) (16 U.S.C. 1379(h)), and working in good standing [2] with a Regional Administrator during the past 3 years in an area of geographic need (municipality or larger region with no existing responder).

3. You are in the Northwest Region (Washington and Oregon), are an active stranding network participant in good standing [2], and are (1) an individual or organization named in the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events (Wilkinson, 1996) that has been actively involved in stranding response, data collection and submission of data as directed by the NMFS Regional Stranding Coordinator during the past 3 years or (2) an individual or organization in the 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality Events.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from eligible individuals, government entities, and businesses in U.S. insular areas as defined by the Marine Mammal Protection Act (16 U.S.C. 1362, section 3(14)). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and Northern Mariana Islands.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

You are not eligible to submit an application under this program if you are an employee of NMFS or any other organizations within the Department of Commerce or the Department of Interior. NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help you prepare your application, except that the Marine Mammal Health and Stranding Response Program staff (at the regional or national level) may provide you with information regarding statistics on strandings, MMHSRP program goals and needs, ongoing programs, funding priorities, and, along with Federal Program Officers, can provide information on application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for any proposal. For activities that involve participation of NOAA employees, for example in the National Marine Mammal Tissue Bank (NMMTB) or analyses of tissues for contaminants, employees of NOAA or the National Institute of Standards and Technology may write a letter stating that they are collaborating with the project, or that the person or organization is trained to participate in the NMMTB or is currently participating in the National Marine Analytical Quality Assurance Program.

Unsatisfactory performance under prior or current Federal awards may result in your application not being considered for funding for this fiscal year in this program.

Note for proposed work beyond the normal scope of stranding network activities, the applicant is responsible for obtaining all the Federal, state, and local government permits and approvals including scientific research permits under the Endangered Species Act or Marine Mammal Protection Act if needed and permits or letters of agreement for work in National Marine Sanctuaries, National Parks, or National Seashores for activities that would be conducted on such sites. For information on permit requirements and applications procedures, contact the NMFS Office of Protected Resources (*see CONTACTS*) or see the following Web site: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.*

For research on live stranded marine mammals, if the applicant stranding network or research participant works for a facility (University, Aquarium, live animal research facility) with an Institutional Animal Care and Use Committee, that applicant must have approval prior to obligation of funds (as required by the regulations under the Animal Welfare Act, 9 CFR 2.30–2.31) and a Marine Mammal Protection Act/Endangered Species Act permit if the research is intrusive (50 CFR 216.27(c)(6)) or if animals must be held after rehabilitation has been completed.

Intrusive research means a procedure conducted for bona fide scientific research involving: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animals' immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (*i.e.,* chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (*i.e.,* audio broadcasts directed at animals that may affect behavior or brainstem auditory evoked responses). Activities directly related to the individual animal's health assessment, accepted diagnostics, treatment, or monitoring are authorized under the stranding authorization and do not require an additional research permit.

F. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum award period of 3 years; however the total Federal share of each award is fixed at

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Coordinator (basic or Level A data reporting which includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports), cooperation with state and local officials in the disposition of stranded marine mammals, cooperation with other stranding network participants.

c. The network participant cooperates with NMFS regarding the timely submission of Level B (supplementary information regarding sample collection related to life history and to the stranding event) and C (necropsy results) data and materials collected, when collected and requested.

d. Is not under current enforcement investigation for activities involving the take of marine mammals contrary to the MMPA/ESA regulations and does not have a notice of violation by NMFS pending resolution with regards to policies governing the goals and operations of the Stranding Network.

a maximum of $100,000 regardless of the funding period requested. We will not accept proposals requesting incrementally funded projects under the Prescott Stranding Grant Program during this grant cycle. If you have received an award and have not expended all the awarded funds by the end of the grant period and wish to continue work on the project beyond the funding period with money already obligated, you may notify the grants officer 30 days prior to the end of the grant to determine if you are eligible for a no-cost extension. If, however, the money is expended and you want funds to continue the project, you must submit another proposal during the next grant cycle subject to the competitive process for consideration.

If we select your application for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding up to the maximum of $100,000 in the Federal share, or extend the period of performance, is totally at our discretion.

G. Cost Sharing

The Prescott Stranding Grant Program legislation requires cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. You must provide a minimum cost share of 25 percent of total project costs (Federal share of project costs cannot exceed $100,000 and 75 percent of the total). For example, if the total project costs were $133,334, then the federal cost share would be 75 percent of $133,334 or $100,000 and your cost share would be $33,334 (25 percent of $133,334); similarly if the proposed total budget for your project is $100,000, the government portion would be $75,000 and your 25 percent contribution would be $25,000. If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding for this funding cycle. You may include cost share for more than 25 percent of the total costs, but this obligation will be binding.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, according to the regulations codified at 15 CFR 14.23 and 24.41, posted on our webpage. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated, or to obtain such services or property for the period of the loan. You must document the in-kind services or property you will use to fulfill your cost share. If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document.

H. Catalog of Federal Domestic Assistance

The Prescott Stranding Grant Program will be listed in the ''Catalog of Federal Domestic Assistance'' under number 11.439, entitled Marine Mammal Data Program. This information should be included on the Application Form, 424, space 10 (*see* How to Apply, Section III, below).

I. Application Addresses

a. For proposals for activities that will take place in the NMFS Northeast Stranding Region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia) contact: Northeast Fisheries Science Center, NMFS, Dana Hartley, 166 Water St., Woods Hole, MA 02543, (508) 495–2090 or *dana.hartley@noaa.gov.*

b. For proposals for activities that will take place in the NMFS Southeast Stranding Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, U.S. Virgin Islands) contact: Southeast Region, NMFS, Kyle Baker, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432, (727) 570–5312 or *Kyle.Baker@noaa.gov.*

c. For proposals for activities that will take place in the NMFS Southwest Stranding Region (California, Hawaii, Guam, U.S. Somoa, Northern Mariana Islands) contact: Southwest Region, NMFS, Joe Cordaro, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA: 90802–4213, (562) 980–4017 or *joe.cordaro@noaa.gov.*

d. For proposals for activities that will take place in the NMFS Northwest Stranding Region (Washington and Oregon) contact: Northwest Region, NMFS, Brent Norberg, 7600 Sand Point Way, N.E., Building 1, Seattle, WA 98115, (206) 526–6733 or *brent.norberg@noaa.gov.*

e. For proposals for activities that will take place in the NMFS Alaska stranding region (Alaska) contact: Alaska Region, NMFS, Kaja Brix, Federal Building, 709 West 9th Street, 14th Floor, Juneau, AK 99802–1668, (907) 586–7824 or *kaja.brix@noaa.gov.*

f. For proposals for activities that will take place in more than one region or are national in scope contact: Office of Protected Resources, NMFS, Teri Rowles, 1315 East West Highway, Silver Spring, MD, 20910, 301–713–2322 ext 178 or *teri.rowles@noaa.gov.*

J. Electronic Access Addresses

This solicitation, the application package, and supplementary documents are available on the NMFS Office of Protected Resources Home Page at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html.* Title IV of the Marine Mammal Protection Act, the Marine Mammal Health and Stranding Response Program is available at: *www.nmfs.noaa.gov/prot_res/laws/MMPA/MMPA.html.* Information on MMPA and ESA research and enhancement permits can be found at: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.*

II. Funding Priorities

Your proposal must address and identify one of the priorities listed here as it pertains to species that the MMPA provides under the authority of the Department of Commerce (cetaceans and pinnipeds, except walrus). If you identify more than one priority, you must list first on your application the priority that most closely reflects the objectives of your proposal.

The priorities are not listed in any particular order and each is of equal importance. These priorities include projects that generally increase the quality of care (recovery or treatment) for stranded marine mammals or increase our understanding of the health of marine mammal populations in the wild, of trends in strandings, or of the causes of marine mammal mortalities, anomalies, and strandings in the wild. Also, efforts to increase our understanding of the correlation between physical, chemical, and environmental parameters and marine mammal health and strandings will be considered a priority for data collection funding. Projects involving any new construction will not be considered, however, projects that involve construction for build-outs, alterations, upgrades and renovations would address a number of the listed priorities.

Note that the purpose of the priority lists is to guide applicants in proposal development by identifying those proposals that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. To this

end, Regional and National priorities are identified here, and represent the projects that will best ensure that the Prescott Stranding Grant Program is successfully implemented (by providing grants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes) in the manner that best helps the regions achieve the goals of the Marine Mammal Health and Stranding Response Program. To ensure that the goals of the Prescott Stranding Grant Program are met, including equitable distribution of funds, proposals will be pooled by regional or national aspect according to the priority addressed by the applicant. If a proposal unclearly identifies a priority, or addresses a different priority than the one indicated by the applicant, NMFS may assign the most appropriate priority. Proposals will then compete for funds within the appropriate regional/national priority pool.

Specifically the following items are the national or specific regional priorities for this solicitation:

A. Recovery or Treatment of Marine Mammals (and associated operational costs)

National

1. Operational costs to enhance and support rehabilitation facilities.
2. Operational costs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment of medical condition or monitoring of treatment response.
3. Post release monitoring to monitor the success of animals released from rehabilitation or beach release from mass strandings.
4. Equipment costs to increase the safety of transport for marine mammals, especially for cetaceans.

Northeast Region

1. Enhanced preparedness for mass stranding events through, for example, establishment of reference baseline laboratories, through training, or improvement of equipment and resource availability.
2. Enhanced preparedness for ''out of habitat'' (marine mammals observed outside of their range or normal environment and in apparent distress) rescues.
3. Enhancing transport safety for live strandings, including, for example, contracts for air transport, rescue ambulances.
4. Improvement of identification and tracking of offshore, floating, dead large whales or unusual species or numbers of dead marine mammals.
5. Increased outreach efforts in areas of heavy human and protected species use, such as rookeries, to reduce harassment and injuries or illnesses caused by other human impacts (e.g. boat strikes on seals) to reduce the need for rehabilitation.
6. Enhanced capability to respond to stranded marine mammals impacted by oil spills including treatment and investigations.
7. Collaborative efforts to improve assessment of seal strandings, for example seal assessment training for collaborating network participants, equipment, and supplies.
8. Outreach projects to educate the public about normal seal behavior vs stranded seal situation.
9. Renovating rehabilitation space for marine mammals in anticipation of rehabilitation facility guidelines, including expansion of holding capabilities within existing facilities.
10. Increase the number of needed personnel resources at certain facilities, including veterinary care. Note, salaries must be for work specific to the project.

Northwest Region

1. Upgrading and enhancing network operations and facilities to handle and treat stranded sick or injured marine mammals including threatened, endangered and depleted pinnipeds and small cetaceans (porpoises, dolphins, killer whales).
2. Enhancing facilities for handling, stabilization and/or treatment of stranded odontocetes (killer whales, dolphins, porpoises).
3. Enhancement of operations and facilities in anticipation of NMFS Rehabilitation Facilities Guidelines.

Southeast Region

1. Enhanced preparedness for live and mass stranded cetacean response, including training, response planning, outreach, and equipment.
2. Enhanced capability to respond to stranded marine mammals impacted by oil spills including response planning, training, and equipment.
3. Enhancing live marine mammal transport safety e.g., contract for air transport, rescue ambulances.
4. Upgrading current rehabilitation facilities. Putting priority on facilities that frequently receive animals (based on historic statistics) and for upgrades in anticipation of rehabilitation guidelines.

Southwest Region

1. Operational costs for stranding response and live animal treatment. For this Region, priority will be given to smaller facilities.
2. Enhancing response capabilities (including operational costs) during El Nino years.
3. Enhanced capability to respond to stranded marine mammals impacted by oil spills including response planning, training, and equipment.
4. Enhancing the response to live stranded cetaceans and pinnipeds in Hawaii.
5. Operations costs for increasing quality of care during normal live stranding events throughout the region.
6. Upgrading facilities in anticipation of rehabilitation facility guidelines.
7. In Hawaii, conduct outreach projects to educate the public about normal seal behavior vs stranded seal situation.
8. Enhancing live cetacean response and transport safety through operational or equipment costs.

Alaska Region

1. Enhanced stranding response throughout the state. Particular need for improved stranding response coverage in remote or rural areas.
2. Enhanced capability for care and treatment of live animals.
3. Enhancing disentanglement response capabilities, particularly with Northern fur seals on the Pribilofs.
4. Enhancing the assessment of rehabilitation and release success.

B. Collection of Data From Living or Dead Stranded Marine Mammals (including operational costs)

National

1. Enhancing consistent response to large whale strandings (except North Atlantic right whales, which have separate funding source) on the East Coast.
2. Enhancing post ''unusual mortality event'' stranding response for 1–2 years after an event is over.
3. Operational costs to improve in-house sample tracking and archiving and for participation in the National Marine Mammal Tissue Bank.
4. Collecting specimens and data to assess the overall health trends in wild marine mammal populations including the frequency or incidence of diseases and anomalies, the cause and effects of abnormal lesions, and baselines on health. Species of concern for 2001–2002 include bottlenose dolphin, harbor porpoise, California sea lion, Steller sea lion, Hawaiian monk seal, ice seals in the Northeast, pygmy sperm whale,

beaked whale, humpback whale, and harbor seal.

5. Collection of health reference data on species that have been subject to unusual mortality events (bottlenose dolphins, California sea lions, harbor seals, gray whales) in the last 5 years.

6. Collection of health reference data on species that are subject to mass strandings (white sided dolphins, beaked whales, pilot whales, common dolphins, rough tooth dolphins).

7. Collection of health data to examine successful rehabilitation including, for example, shifts in microbial flora during rehabilitation.

8. Collection of data on the incidence, pathogenesis, and impacts of marine mammal diseases and conditions that affect survival and releasability. The diseases of particular interest for 2001–2002 are: Brucella, morbillivirus (particularly on West Coast pinnipeds and in bottlenose dolphins of the mid-Atlantic), herpes virus in monk seals and steller sea lions, arborviruses in cetaceans and pinnipeds. However other disease studies will be considered.

9. Enhancement and consistency of data collection and collaborative efforts through the use of protocols and training manuals, in either electronic format or in book format. Electronic formats can include video, imagery, and search capabilities.

10. Enhancing the ability to assess health in stranded marine mammals through the development of new assessment tools and techniques.

11. Enhancing the assessment of the causes of single and mass stranded marine mammals through biological, physiological, or medical diagnostic studies. Animals of particular interest include beaked whales.

12. Necropsy equipment and carcass transport equipment especially for large cetaceans.

13. Upgrading information management systems and capabilities to improve or allow access to National databases.

14. Enhance efforts to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible along all U.S. coasts.

Northeast Region

1. Cooperative projects, through partnerships with a variety of marine mammal experts, to conduct studies supporting Marine Mammal Health and Stranding Response Program objectives.

2. Monitoring of survival of beach released, and rehabilitated and released cetaceans (satellite tags and ARGOS support).

3. Support for stranding network staff and capabilities to provide near real time strandings data and information management.

4. Collection of samples for genetic analyses and archival of samples for future retrospective studies.

5. Serological and histopathological analyses of samples collected from stranded marine mammals, using NMFS recognized laboratories.

6. Characterization of ice seal movements from stocks in Canada and relationship to strandings on the U.S. East Coast.

7. Performing quality assurance review and editing of historical stranding data for regional strandings. Particular emphasis to ensure data consistency with existing databases through collaboration with letterholders in the region, and with the Cetacean Distribution Database, compiled by the Marine Mammal Program, National Museum of Natural History, Smithsonian Institution

8. Enhanced evaluation and collection of human interaction evidence from stranded marine mammals, including costs for training collaborating Network Members to detect and document this evidence.

9. Enhance necropsy facilities and other improvements to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible.

Northwest Region

1. Investigations of (a) the incidence of human interactions; (b) diseases affecting; and (c) comparative studies of contaminant loading on marine mammals.

2. Investigations of health factors of stranded marine mammals with emphasis on southern resident killer whales.

3. Improve stranded marine mammal data collection and management.

4. Post unusual mortality event monitoring to enhance data collection after an event has ended.

Southeast Region

1. Enhanced collection and evaluation of human interaction evidence from stranded marine mammals.

2. Cooperative investigations using in-depth sample collection for marine mammal health research projects.

3. Serological and histopathologic analyses of samples collected from stranded marine mammals, using quality control techniques.

4. Developing the baselines and health reference data for comparisons with mortalities and disease observed during die-offs.

5. Equipment and facility enhancements for scientific health research *e.g.,* necropsy facilities.

6. Enhance efforts to achieve accurate, consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible throughout the Region.

Southwest Region

1. Gray whale stranding investigations.

2. Cooperative projects in Hawaii through partnerships with a variety of marine mammal experts, to respond to and conduct studies supporting Marine Mammal Health and Stranding Response Program objectives.

3. Investigations of the prevalence of such diseases as morbillivirus in live stranded odontocetes.

4. Enhancing the ability to detect gun shot wounds and injuries in stranded California sea lions, for example, through conduct of thorough necropsies.

Alaska Region

1. Achieve consistent Level A data collection throughout the state, including remote areas.

2. Collect Level B and Level C data collection for dead strandings whenever possible.

3. Tissue sampling for genetic analyses.

4. Gray whale stranding response for post unusual mortality event.

III. How To Apply

You must follow the instructions in this document in order to apply for a grant or cooperative agreement under the Prescott Stranding Grant Program. Your application must be complete and must follow the format described here. Your application should not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your application. These unbound applications must be sent to the Application Addresses listed in Section I.I. of this document by the application deadline (*see* **DATES**). We strongly recommend early submission of applications to allow some time for review and resubmission with corrections for minor omissions, if necessary. However, time and resource constraints may limit our ability to conduct early reviews, and we are not required to screen applications before the submission deadline, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected.

A complete application package with detailed instructions and supplementary information can be found at our Web

site: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html.* Essentially, the complete application must include a number of completed forms described in this section: SF–424 ''Application for Federal Assistance'', SF–424B ''Assurances—Non-Construction Programs'', and SF 424A ''Budget Information—Non-Construction Programs'' (with separate sheet for details). Additionally, the application must include a Title Page, Project Narrative, and supporting documentation, as described in this section. Lastly, applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' In addition, any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'', as required under 15 CFR part 28.

A. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Forms 424 and 424B (4–92) as the cover sheets for each project. You will need the ''Catalog of Federal Domestic Assistance'' number and Title to complete item 10 of Standard Form 424 (see section I in this document above, the number is 11.439, and the title is ''Marine Mammal Data Program''). In order to complete item 16 of Standard Form 424 (may be required for state applicants), see directions in section V.A.5. of this document.

B. Title Page

You must complete a Title Page for each project. You should list on the Title Page the project title, duration, name, affiliation, address and phone number of the Principal Investigator, the project objective, the specific priority to which the application responds (see section II. of this document), and a statement regarding the Federal, non-Federal, and total costs of the project.

C. Project Budget

You must submit a budget for each project, using OMB standard form 424A, Budget Information—Non Construction Programs and associated instructions. On a separate sheet if necessary, you must provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, also describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (*e.g.,* lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25-percent level up to the negotiated rate as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application.

We will not consider fees or profits as allowable costs in your application. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

D. Narrative Project Description

You must provide a narrative description of your project that may be up to 10 pages long. You should use Courier size 12 font, and can single space the narrative. The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

1. Project goals and objectives. Identify the specific priority, listed earlier in this document, to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the marine mammal health and stranding response community. State what you expect the project to accomplish.

2. Project impacts. Describe the anticipated impacts of the project on the recovery or treatment of stranded marine mammals or assessment of marine mammal health. Describe how you will make the results of the project available to the marine mammal health and stranding community.

3. Evaluation of project. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

4. Need for government financial assistance. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

5. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect.

6. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(b) Who will be responsible for carrying out the various activities? Highlight work that will be conducted by co-Investigators. Also, highlight work that will be subcontracted and provisions for competitive subcontracting. The lead organization and person listed as the technical contact, responsible for all technical oversight and implementation of the approved work plan as delineated in the Statement of Work, should be identified as the Principal Investigator. One Principal Investigator must be listed on each project. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or materials, should be referred to as Cooperators or Collaborators.

(c) What are the major products and how will project results be disseminated? Describe products of the project, such as anticipated number of live animals that will be treated, preparation of a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(d) What are the project milestones? List milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities. Although actual stranding events cannot be predicted, historic stranding data can be used to assess season, species, and likelihood of strandings. This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

7. Participation by persons or groups other than the applicant. Describe how government and non-government entities, particularly other members of the marine mammal health and stranding response community, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the marine mammal health and stranding response community in determining which applications to fund.

8. Project management. Describe how the project will be organized and managed. Identify the Principal Investigator and other participants in the project. If you do not identify the Principal Investigator, we will return your application without further consideration. Include a description and copies of Principle Investigator's current LOAs, letter of designation, or letter of research authorization, and any necessary scientific research permits. List the Principle Investigator's and participant's prior or current Federal awards and describe resultant products. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Include copies of any endorsements that you have received from other marine mammal health and stranding response participants related to this project. Provide a statement no more than two pages long of the qualifications and experience (e.g., resume or curriculum vitae) for the Principal Investigator, co-investigators, and any Collaborators, Cooperators, or Consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through Consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, ''Grants and Cooperative Agreements to State and Local Governments,'' and 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations.''

E. Supporting Documentation

You should include any relevant documents and additional information (i.e., maps, background documents, historic stranding statistics) that will help us to understand the project and the problem/opportunity you seek to address. This will not count as a part of the 10 page limit.

IV. Screening, Evaluation, and Selection Procedures

Screening, Evaluation, and Selection Procedures will take place in 4 steps, described in detail in this section: initial screening, technical panel review, merit review, and the final selection by the Selecting Official. The initial review will compile all complete applications submitted by eligible network participants. These applications will be divided for consideration by two technical review panels; one panel to review all west coast applications, one to review all east coast applications. Applications for national priorities will be forwarded to the panel with fewer applications. The technical review panel results will be used to rank the applications within regional (Alaska, Northwest, Southwest, Northeast, Southeast, and National) pools. The merit review will consider the panel comments for the 6 pools of ranked applications and will make recommendations regarding equitable distribution of funds. The Selecting Official will receive the recommendations of the reviewers and will make the final decision regarding which applications will be funded.

A. Initial Screening of Applications

Applications received at any of the NMFS Regional Offices or the Headquarter's Office of Protected Resources, will be screened to ensure that they: were received by the deadline date (*see* **DATES**); include OMB form 424, 424 A., and 424 B. signed and dated by an authorized representative (*see* section III of this document); were submitted by an eligible applicant; provide for at least a 25-percent cost share (*see* section I.G. of this document); involve an eligible activity; address one of the funding priorities for species under Federal jurisdiction (*see* section II.A.–B. of this document); and include a budget and a statement of work including milestones (*see* sections III.C. and III.D.6 of this document); and identify the Principal Investigator (*see* section III.D.8. of this document). If your application does not conform to these requirements and the deadline for submission has passed, we will return it to you without further consideration. If possible, applications should be submitted as early as possible prior to the end of the application period to provide time for us to return incomplete applications to you for correction or completion prior to the deadline. However, we do not have to screen applications before the submission deadline and may not be able to depending upon time and available resources, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected. Only those proposals satisfying all of the basic requirements above will enter the full evaluation phase of the review process, described in here in Section B.

B. Technical Evaluation of Proposed Projects

After the initial screening, we will convene a panel of appropriate private and public sector marine mammal health and stranding response experts to determine the technical merit of each proposal. Proposals submitted to headquarters and regional offices will be evaluated using the same criteria, as defined here in this section. The panel will provide individual evaluations of each proposal, and no consensus scores will be made. Each proposal will be reviewed by at least three technical reviewers. These reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing and will present their reviews to the panel. They will assign scores to applications based on the criteria below, with weights shown in parentheses. Resultant scores will be used to rank proposals in regional (and national) pools.

a. Soundness of project design/conceptual approach/response capabilities. Applications will be evaluated on the conceptual approach; enhancement of stranding response or treatment; the need for such efforts; the applicability of the project to the objectives of the Prescott Stranding Grant Program in implementing the goals of the MMHSRP and addressing one of the listed priorities; the scientific merit of the data collection to enhance the understanding of the health of marine mammal populations in the wild; the likelihood of project results in the time frame specified in the application; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results; whether proposed analyses

include quality assurance considerations. (50 percent)

b. Project management and experience and qualifications of personnel. The organization and management of the project will be evaluated. The project's Principal Investigator and other personnel, including Co-investigators, Consultants and Contractors participating in the project, will be evaluated in terms of related experience and qualifications. The amount of collaboration with other network participants reflected by the proposal will be considered. Applications that include Consultants and Contractors will be reviewed to determine if your involvement, as the primary applicant, is necessary to the conduct of the project and the accomplishment of its objectives. Applications from Principal Investigators that are researchers that do not hold LOAs, are not MMPA Section 109(h) participants, and are not on the Northwest Region's contingency plan list must include copies of the applicant's letter of designation, researcher letter of authorization, research permit and any Co-investigator's letters of authorization. (50 percent)

c. Project evaluation. The effectiveness of your proposed methods to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be examined closely and scores may be marked down accordingly. Budget questions will be flagged by reviewers and may become points of negotiation if the proposal is recommended for funding based on technical merit. The appropriateness of the matching funds to the project will be evaluated and the overall use of the facilities operations costs in support of data collection or response and treatment of marine mammals. (15 percent)

Following the technical review, we will determine the score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will list the applications by region or national pool, rank the lists according to the final technical score, and eliminate from further consideration those applications that do not meet the minimum ''passing'' score of 60 points.

C. Selection Procedures and Project Funding

After projects have been evaluated and ranked, the Marine Mammal Health and Stranding Response Program staff, the NMFS Regional Administrators (RAs) and Office Directors (ODs) will conduct a merit review in consultation with the Marine Mammal Commission and U.S. Fish and Wildlife Service, to consider the results of the scientific technical panel review and develop recommendations for program funding including recommendations for equitable distribution among the NMFS stranding regions. This merit review team may consider any episodic stranding, any anomalous mortality event, or unusual mortality event that occurred in any region in the preceding year; data regarding average annual strandings and mortality events per year per region; and the size of the marine mammal populations inhabiting a geographic area within such a region. They will also consider the actual stranding statistics per region for the previous 5 non-El Nino years and for the last El Nino year. The review team will prepare a written justification for any recommendations for funding that fall outside the ranking or equitable distribution order, or for any cost adjustments.

The Assistant Administrator for Fisheries (AA) is the Selecting Official, and will review the funding recommendations and comments of the review team and determine the projects to be funded. In making the final selections, the AA may consider costs, geographical distribution, financial need, duplication with other federally funded projects, and equitable distribution of funds among the designated stranding regions. As a result, awards are not necessarily made to the highest technically ranked applications.

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between you and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants Management Division. If the proposed work entails substantial involvement between the applicant and NMFS, a cooperative agreement will be utilized. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. The notice advises you of your responsibilities as an applicant for Federal assistance. Contact the Office of Protected Resources for a copy of this notice, or obtain it from the Government Printing Office Web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html* or the Prescott Stranding Grants Program Web site: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html*.

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that you may have received, the Department of Commerce has no obligation to cover pre-award costs.

A. Your Obligations as a Recipient (Successful Applicant)

If you are awarded a grant or cooperative agreement for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we request that you submit final reports in electronic

format, in accordance with the award terms and conditions, for publication on the NMFS Protected Resources homepage. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. We will consider requests for exemption from electronic submission of final reports on a case-by-case basis.

4. In addition to the final report in section V.A.4. of this document, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

VI. Comments and Responses

The Draft Implementation Plan for the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Draft Implementation Plan) was posted on our website. Stranding network participants were contacted and asked to review the Draft Implementation Plan and provide comment directly to NMFS prior to publication of the Solicitation for Applications in the **Federal Register**. Specifically, we requested comments on several areas of the plan including: eligibility criteria for grant applicants, the grant review and selection process, and priorities for funding.

We received 20 separate comment letters from 12 stranding network participants, the Marine Mammal Commission, three organizations representing constituents that include stranding network participants, two new network members, one advocacy organization, and one researcher interested in network activities. Combining similar comments, we received 78 comments in total. The comments and responses are presented below and are grouped topically. Some purely editorial comments have been incorporated into this document and are not listed here.

General Comments

Comment 1: A number of commenters asked whether multiple applications could be submitted by, or multiple grants awarded to, the same network member. Particularly, commenters asked whether multiple grants could be awarded for clearly separate projects, whether a Principal Investigator on a grant could also apply for funding on another grant (as co-PI), and whether a network member that had already received a grant could apply during the year for funds for a catastrophic strandings.

Response: To clarify the terminology used in this document: A Principal Investigator is the lead organization and person listed as the technical contact, responsible for all technical oversight and implementation of the approved work plan as delineated in the Statement of Work. One Principal Investigator must be listed on each project. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or materials, should be referred to as Cooperators or Collaborators.

There is no limit on the number of applications that can be submitted by the same network member. However, there are insufficient funds to award a grant to every member of the network, and we cannot estimate how many qualified applicants will apply for funds. In an attempt to ensure that the greatest number of network participants receive assistance this year, during this funding cycle we intend to award no more than two grants responding to this solicitation to any network member and their organization as a Principal Investigator. Researchers associated with the network that are not independently authorized (through an LOA, 109(h), or identified in the Northwest Contingency Plan) will only be eligible for one grant under this solicitation. Multiple proposals submitted by any individual or organization must identify clearly different projects; (e.g. one for facility operations to support rehabilitation efforts, one for data collection), and must be successful in the competitive process. Network members and researchers may also be identified as Co-investigators or Cooperators on additional proposals, and may receive reimbursement from other successful applicants for activities such as the conduct of analyses for the project, or the collection of samples. Reimbursement to a cooperating lab or researcher that does work for multiple network members may be identified on multiple proposals.

We intend to withhold up to $600,000 of the 2001/2002 Prescott Stranding Grant Program funds from this grant cycle for use for unexpected events such as mass strandings or oil spill events, that may occur throughout the year. In areas where mass strandings occur frequently, or where events such as El Nino can be anticipated, an application in advance of the event can be submitted to cover known costs involved in preparing for a response if consistent with our listed priorities. Network members that have received 2 grants under the competitive process described in this document will also be eligible for these in-year funds for a catastrophic event.

Note that, as described in 15 CFR 24.24(a)(3), contributions from the applicant counted towards the 25 percent matching requirement must be different for each grant application submitted by an applicant; and funds from one Federal grant cannot be offered as matching funds for another Federal grant.

Comment 2: Grants should be made available for catastrophic events as they occur, or before or after they occur. Since they cannot be predicted, this situation should be explicitly addressed within the Grants Program to maximize the opportunities for funding or reimbursement

Response: We will accept applications for unexpected, large, stranding events, including mass strandings or strandings caused by catastrophic events such as oil spills, throughout the year and will fund successful unsolicited applications from retained FY 2002 funds, if appropriated. Upon the occurrence of a catastrophic event, network participants should immediately contact their NMFS Regional Coordinator regarding their intent to submit an unsolicited application. The same application materials listed in this document (see Section III) must be submitted. The application can be considered outside the competitive process if it meets the MMHSRP objectives, outside of the goals listed in the priorities identified in this document (Section II), if justification for a non-competitive (sole-source) award is established.

Comment 3: One network participant asked whether cooperative applications with a federal agency could be submitted.

Response: Federal agencies are generally barred from accepting funds from another source to pay transportation, travel, or other expenses for any Federal employee unless specifically authorized by law. The Prescott Stranding Grant Program does not specifically authorize the transfer of funds to other Federal agencies for grant projects. The statute also requires a non-Federal matching requirement of 25 percent of the grant. Thus, for this first funding cycle, we have made an administrative decision based on guidance from the statute and associated legislative history regarding the intended purpose of these funds that the agencies and employees within the Department of Commerce (DOC) and the Department of Interior (DOI) are not

eligible to apply as Principal or Co Investigators and cannot receive compensation from this program beyond costs for analyses conducted as a Cooperator on a project. Eligible network members employed by other Federal agencies (with the appropriate authority to receive Federal Assistance) outside of DOI and DOC will need prior approval from their agency to receive compensation and/or expenses from a Federal grant. Additionally, network participants can submit applications with federal agencies listed as Cooperators on the project, and applications can include reimbursement to federal laboratories conducting analyses for the proposed project.

Comment 4: Two commenters expressed concerns regarding the apparent non-cooperative, competitive nature of the Implementation Plan for the Prescott Stranding Grant Program. Requiring that individual researchers apply for funds with a stranding organization as a sponsoring organization was recommended to encourage cooperation. Additionally, one commenter suggests giving extra weighting to proposals from multiple LOA holders.

Response: Because funds are limited and the needs of the program are not, the Prescott Grant Program is competitive. However, although we have limited the number of awards that can be granted to particular applicants as Principal Investigators during this grant cycle, network members and collaborating scientists can participate on additional projects as Co-investigators or Cooperators, and can receive reimbursement from other successful grant applicants. Additionally, Principal Investigators that are not traditional network participants are required to include network members as Co-investigators on their projects. All applicants are encouraged to reimburse LOA holders and other qualified Network participants for tissue collection, data collection, or any other efforts that will be required for the success of the project.

Comment 5: One commenter stated that a mechanism should be developed to ensure accountability for funded projects through review of completed projects or consideration of past performance for applicants awarded previous funding.

Response: All NMFS grant programs must be administered according to procedures identified through a Departmental Administrative Order (DAO 203–26, *see http://www.osec.doc.gov/bmi/daos/203–26.htm*). Final reports are required, and internal checklists and procedures for monitoring grants including site visits, will be followed. Although audits are only required if an applicant gets more than $300,000 in Federal funds per year, all grant recipients must make records available for review or audit if requested. Additionally, unsatisfactory performance in prior or current Federal awards will be considered in determining whether or not an application is eligible for funding this year under the Prescott Stranding Grant Program.

Comment 6: A number of individuals and groups that commented indicated that the constituent groups including the organizations involved in existing stranding programs should have been afforded a greater consultative role in the development of the Prescott Stranding Grant Program. They were concerned that there would be no formal public review and comment period for the Draft Implementation Plan.

Response: The statute directed NMFS to consult with the Marine Mammal Commission, US Fish and Wildlife Service (USFWS) and ''a representative from each of the designated stranding regions, and other individuals who represent public and private organizations that are actively involved in rescue, rehabilitation, release, scientific research, marine conservation, and forensic science regarding stranded marine mammals'; which includes primarily stranding network participants. Given the broad characteristics of the marine mammal stranding network and further directives to administer this program in a timely manner, the selection of a small group of participants to adequately represent the entire network and associated community was deemed insufficient. The Draft Implementation Plan was, therefore, posted on our website, and Network participants were asked for their input. Over 20 commenters responded with extensive comments; including the Marine Mammal Commission, Network members, interested constituents, and constituent groups. All comments were considered, resulting in many revisions to the Program. Experience and feedback resulting from this solicitation may further modify this program in future years.

Comment 7: Two constituent groups commented that constituents should be consulted, per Congressional intent, regarding the development of criteria for and award of grant money.

Response: The criteria for awarding grant money were included in the Draft Implementation Plan section on Screening, Evaluation and Selection Procedures; therefore, constituents have had an opportunity to comment on these criteria and some modifications have been made. Further, technical reviews will be conducted on all complete and qualified applications. Reviewers will include network participants and other constituents. Network participants and constituent groups will therefore have an active role in the award process under the Prescott Stranding Grant Program.

Comment 8: One commenter asked for clarification regarding whether oceanaria that do not have an Institutional Animal Care and Use Committee (IACUC) need to form one if they are going to conduct live animal research. References on the formation of IACUCs were requested.

Response: Facilities and Universities involved in live animal research are required to have an IACUC, per Animal Plant and Health Inspection Service (APHIS) IACUC requirements. Institutions that do not have an IACUC do not have to form one for this grant cycle. However, those institutions or researchers affiliated with Universities that have a standing Committee have to have their Committee's approval before funds will be obligated for projects that require research on live stranded marine mammals. The language relative to this issue has been clarified in this document.

Note that, within the next few years, NMFS intends to require IACUC reviews for live research conducted on stranded marine mammals. Guidance will be developed at that time for the formation of IACUCs for this specific purpose on an institutional or regional level. For general information on IACUCs, see 9 CFR 2.31 for the APHIS IACUC requirements, as well as *The IACUC Handbook* edited by Jerald Sivlerman, Mark A. Suckow, and Sreekant Murthy and published by CRC Press in 2000, or *The Care and Feeding of an IACUC* edited by M. Lawrence Podolsky and Victor S. Lukas and published by CRC Press in 1999.

Any study that requires collection of animals from the wild, invasive procedures beyond those generally used to rehabilitate and release marine mammals, or retention of marine mammals after rehabilitation is complete, may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits have been obtained. For information on permit requirements and applications procedures, contact the NMFS Office of Protected Resources (see **CONTACTS**) or see the following Web site: *http://*

www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.

Comment 9: One commenter requested a listing of the MMHSRP goals to provide guidance to prospective applicants.

Response: These statutory goals are listed in the description of the Prescott Stranding Grant Program (Section I.A. of this document), and are repeated here: to facilitate collection and dissemination of data, to assess health trends in marine mammals, to correlate health with available data on physical, chemical, environmental, and biological parameters, and to coordinate effective responses to unusual mortality event. Further information regarding the MMHSRP can be found on our Web page, at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/mmhsrp.html.*

Comment 10: A commenter suggested that special terms of reference used throughout the Draft Implementation Plan (out of habitat, level A data) should be defined.

Response: We have included in this Notice clarification of such terms when those terms first appear in context within the document.

Comment 11: Two commenters noted that the plan does not provide funds for species under the jurisdiction of the USFWS, such as sea otters, walrus, polar bears, and manatees, and suggested that there should be increased coordination of the stranding programs under the two agencies' jurisdictions.

Response: NMFS and USFWS were given separate authorizing language in the Marine Mammal Rescue Assistance Act of 2000 (Act) which established the Prescott Stranding Grant Program. NMFS received no comments from the USFWS during the comment period, however, NMFS consulted with USFWS on the implementation of this program prior to finalizing this **Federal Register** notice.

The MMHSRP has been a collaborative effort between USFWS and NMFS, and we will continue that collaboration with the implementation of the Prescott Stranding Grant Program.

Comment 12: One commenter was concerned that the short time allotted for review and incorporation of comments in our initial timeline precluded meaningful revisions based on comments received from stranding network organizations.

Response: This document reflects many changes resulting from the large number of comments received. Indeed review of the comments, revisions, and preparation of responses were partially responsible for the delay in publication of this document. All comments were considered and we made revisions that we determined were appropriate based on consideration of the comments.

Eligibility

Comment 13: A number of commenters indicated that the listed eligibility criteria are too broad and will invite applications from people only remotely associated with the Stranding Network, diluting the intention of the Grant Program to assist or reimburse the active network participants that have been volunteering without Federal support. Some suggested limiting eligibility to Letter of Agreement (LOA) holders, to LOA holders with established records in the recovery and rehabilitation of marine mammals, or to independent researchers sponsored by LOA holders.

Response: Limiting the Prescott Stranding Grant Program only to organizations and individuals holding Letters of Agreement will exclude a large number of active Network participants. In the Northwest Region particularly, there are numerous participants that conduct significant stranding response activities for state or local authorities, or as requested by the NMFS Regional Administrator. Some of these participants are authorized through section 109(h) of the Marine Mammal Protection Act. Additionally, the Network in most regions includes participants designated by LOA holders to respond to strandings and in some cases assist in rehabilitation. These participants include cooperating scientific investigators, institutions, and volunteer organizations. In some areas, designated participants may play a more active role in day-to-day response to strandings than the LOA holders.

LOA holders retain the ultimate responsibility for activities conducted under their authority. Therefore, generally, they restrict designation to individuals that meet appropriate qualifications. Additionally, a list of these designees must be submitted to NMFS. By granting designation, the LOA holders are responsible for ensuring that volunteers and cooperating investigators under their authority are Network participants in good standing. However, we recognize that the list may include new volunteers that require training, or participants that are restricted in response capabilities and authority.

The eligibility criteria have been amended to some extent; however, to include the ''in good standing'' criteria for network participants operating under MMPA section 109(h) (109(h) responders) or other authority, as well as to LOA holders. Additionally, 109(h) participants must be active participants, that have been involved in network activities over the past 3 years.

Another amendment to the eligibility criteria adds a requirement for applicant scientists holding letters from Regional Administrators to collect specimens from stranded animals to conduct research. These scientists may not be LOA holders, 109(h) responders, or on the Northwest Region's contingency list. These applicants must be able to demonstrate participation in network activities during the past 3 years, and must include a network member as a Co-investigator on the project.

Generally, the NMFS Regional Coordinators are familiar with the active network participants within their region, and their screening will provide some assurance that only applications from active and qualified network participants and Collaborators compete for these limited grants.

Comment 14: Allowances should be made for applications from inexperienced applicants if they seek and receive the appropriate permits or letters of authorization before receiving grant awards.

Response: Applications from new network members, such as individuals or groups that have gotten authorization recently, will likely not qualify for eligibility during this first funding cycle unless those applicants have experience as an active Network participant (for example as a designee or 109(h) responder) in good standing for the past 3 years. During the development of the Act, the intent to provide financial assistance to the active volunteer stranding network was clear. The Act's stated intent is to ''provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes * * *'', and further notes that preference should be given to ''* * * those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals''. However, newcomers that become active participants in the Network will have opportunities to apply for funds in future years if funds are appropriated.

Comment 15: One commenter suggested that the explanation of ''in good standing'' referring to permit holders was redundant, since permit holders should be authorized under LOAs or other listed mechanisms for Network involvement.

Response: There are long term, active Network members that receive verbal requests from their Regional Office to respond to strandings and may hold research permits but do not hold LOAs (although NMFS is developing procedures to issue standardized written LOAs nationally). Additionally, this footnote applies to researchers or Principal Investigators that are authorized network participants but also hold research or public display permits. These applicants may not be eligible if they are not in compliance with their permit conditions since lack of compliance implies a potential inability to responsibly fulfill grant requirements.

Comment 16: Two commenters expressed concerns about criteria listed for ''in good standing''. Since LOAs have not yet been standardized, all participants may not be complying with the specific responsibilities listed. That commenter also felt that the phrase ''in a timely manner'' in the first sentence is subjective. Another commenter took special exception to the criteria for timely reporting of Level B and C data upon request by NMFS. Such reporting is not a requirement of most LOAs, and in some cases cannot be done due to conflicting priorities.

Response: The LOAs are currently being redrafted and standardized, in part because many of the existing agreements were prepared before the passage of the Marine Mammal Health and Stranding Response Act. Many of the new reporting and cooperation standards associated with implementation of the MMHSRP have been passed on to Network members as written requests, but as the commenters have noted, may not be reflected in all existing LOAs. We have modified these requirements to note that, while collection of Levels B and C data are not mandatory, timely reporting of these data when they are collected is considered to be an important indicator of cooperation with NMFS and the Network. We believe that network participants that are unresponsive or habitually do not cooperate with NMFS or other network members are not operating ''in good standing'', therefore these criteria remain in the modified description.

Comment 17: Two commenters asked why the Northwest Region appeared to apply more restrictive criteria for eligibility than other regions.

Response: The Northwest Region Stranding Network is composed of cooperating scientific investigators and institutions, volunteer individuals and organizations, wildlife and fisheries agencies, and enforcement agencies. The documentation of their participation as members of the Network was initially provided in the Northwest Region Marine Mammal Stranding Network Handbook in the early 1980s. After approximately 15 years of cooperative effort, the participants that remained active were included in the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events in 1996. To date, no LOAs have been issued in the Northwest Region for Network participants that are not otherwise authorized directly, pursuant to Section 109(h) of the MMPA (Federal, state, and local authorities), and the most recent formal documentation of participation, as a cooperating organization, is the 1996 Contingency Plan. However, since 1996, several organizations named in the contingency plan have resigned or otherwise become inactive. Therefore, to identify those participants that are continuing to provide response and data collection services for the Network, it became necessary to include recent participation as performance criterion. The 2001/2002 Contingency Plan is under review internally and will be available shortly. The new Plan identifies participants active since 1996, while removing participants that are no longer active. Once completed and available, the updated Contingency Plan will be used to identify the Northwest Region's active Network participants.

Comment 18: One commenter asked whether all applicants have to be participants in the MMHSRP to be eligible for the Prescott Stranding Grant Program.

Response: Yes, LOA holders and other Network participants described as ''in good standing'' and, therefore, qualified as applicants for the Stranding Grant Program are participating in the MMHSRP. The Marine Mammal Health and Stranding Response Program, described in the Background section of this document, was established under the 1992 Amendments to the MMPA. The legislative history of the MMHSRP indicates it was developed to direct and supplement the existing stranding network to improve the Network's ability to determine the reasons for marine mammal stranding events, particularly unusual events. Although prior to the 1992 Amendment, the Secretary of Commerce was responsible for authorizing people to respond to marine mammal strandings, the MMHSRP provided the Secretary with more explicit guidance on administration of the Stranding Network.

Comment 19: Two commenters questioned the restriction of the eligibility criteria relating to state and local government response to cetacean strandings without justification for excluding pinnipeds.

Response: This restriction was originally intended to reduce the potential for local governments that rarely or inconsistently participate in the stranding network from applying for funds under the Prescott Stranding Grant Program, while allowing those local agencies that are vital network members to participate. The criteria has now been modified to require MMPA 109(h) applicants to be ''in good standing'' and active in recent years, allowing pinniped response groups to participate, if they qualify.

Comment 20: One commenter asked whether researchers and organizations outside of the US would be eligible for Prescott Stranding Grant Program funds, particularly for response to mortality events that may have been caused by US activities.

Response: No. The Marine Mammal Rescue Assistance Act and its legislative history clearly indicate that the purpose of this program is to provide some financial relief to active, volunteer, US stranding network participants that have been absorbing the costs of response to marine mammal strandings. There is no provision in the Act nor intention apparent in the legislative history, to provide funds to individuals or organizations that are not part of the U.S. stranding network.

Comment 21: One commenter suggested that, while there is some merit to discouraging the development of new facilities that may be capitalizing on this new granting opportunity, the Prescott Stranding Grant Program may discourage the construction of new facilities where they are needed.

Response: Explicit authorization would be required in the Prescott Stranding Grant Program to fund major new construction projects. Additionally, Congressional intent expressed in the Act, its legislative history, and subsequent clarification from authors of the statute, indicate that the funds are not for new construction or new participation. The purpose of the Prescott Stranding Grant Program is to provide funds for existing facilities and active stranding network participants. A new member of the Network, therefore, may not be eligible to apply for these funds during this grant cycle. However, once they have become active network participants, they may become eligible in future grant cycles.

Comment 22: One commenter indicated that the Alaska Native exemptions under the MMPA allowed marine mammal takes for subsistence and for creating and selling authentic

handicrafts or clothing, and allowed the Secretary of Commerce to enter into a cooperative agreement with Alaska Native organizations to conserve marine mammals and to provide co-management of subsistence use by Alaska Natives. Therefore, the commenter suggested that there might be active, trained Alaskan Native participants of the marine mammal stranding program that do not work under an LOA. If an LOA will be necessary to qualify for funding opportunities under the Prescott Stranding Grant Program, applicants should be allowed to obtain authority after the award is granted.

Response: The Alaskan Native exemptions do not include authorization to respond to and collect materials from stranded animals as part of a specific stranding response; e.g. to fulfill Level B and C data collection protocols. Rather, under this exemption they can take marine mammals for subsistence or handicrafts. Currently, all Alaskan Natives that are responding to strandings and providing reports to the Regional Administrator are authorized under an LOA and are eligible for funding under this Program. The intent of the Program is to provide funds to the existing volunteer network. Therefore, individuals or organizations cannot apply for the funds before they are participating in the stranding network.

Priorities

Many comments were received that suggested concerns regarding the intent of the priority lists. To clarify: the purpose of the priority list is to guide applicants in proposal development by identifying those proposals that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. To this end, each region identified those priorities that will best ensure that the Prescott Stranding Grant Program is successfully implemented (by providing grants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes) in the manner that best helps the regions achieve the goals of the Marine Mammal Health and Stranding Response Program. To ensure that the goals of the Prescott Stranding Grant Program are met, including equitable distribution of funds, proposals will be pooled by regional or national aspect according to which priorities are addressed by the applicant. Proposals will then compete for funds within these pools. Technical reviewers that are applicants in one pool may be among the reviewers for applications from another pool.

Comment 23: Commenters indicated that the most critical funding areas are for equipment, supplies, and travel. They suggested that the agency appeared to be supplanting these critical needs with agency policy preferences, and indicated that each of these sets of interests should be addressed within this program.

Response: The priorities identified in the Draft Implementation Plan were developed under the categories designated in the Act establishing the Prescott Stranding Grant Program. We agree that they were selected to successfully implement the Program through the MMHSRP, which was established by Congress in the 1992 Amendments to the Marine Mammal Protection Act, in part, to guide the Agency on administration of the stranding network. The priorities have been reordered in this document to incorporate the operational cost projects into the two project categories identified in the Act: rescue and rehabilitation, and data collection. This reordering may reduce concerns expressed by the commenters that applicants for a grant for operational costs will receive low ranking. Actually, in this first funding cycle, we anticipate that 60 to 70 percent of the funds (depending on the number of eligible and complete applications and their federal costs) may be awarded for proposals for operational costs. Operational costs can include, for example; salaries, equipment for rehabilitation efforts, food for rehabilitating animals, water testing, water filtration upgrades, necropsy equipment, gasoline, computer equipment to track materials collected from stranded marine mammals, etc.

Comment 24: Three commenters indicated that the priorities appear to be geared more towards live marine mammal strandings, however the majority of stranding activities relate to dead marine mammals. One of the commenters specifically expressed concern about this apparent bias in the National and Southeast data collection priorities, and pointed out that since fewer than 15 percent of all Southeast marine mammal strandings are live, improved data collection efforts on all dead stranded marine mammals would be more cost effective than increasing efforts on the live strandings.

Response: Priorities are listed for both live and dead marine mammal strandings. No indication of an Agency preference exists or was intended. For the Southeast Region in particular, most of the data collection priorities listed apply to improved data collection from dead stranded marine mammals.

Comment 25: One commenter suggested that the funding priority list provided in the Draft Implementation Plan should be narrowed considerably to allow applicants to compete successfully for funds for ongoing activities to help defray the enormous cost of recovery and rehabilitation of stranded marine mammals rather than focus on the new or unmet research needs of NMFS.

Response: The priority list was developed to provide guidance to applicants on priorities that would successfully compete for funds by achieving the stated objectives of the Prescott Stranding Grant Program: ''the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes.'' We have revised the priority lists to fold the priorities related to operational costs into the two categories of recovery or treatment, and data collection, to illustrate the integral need for funds for operational costs that support these two objectives.

Comment 26: One commenter suggested that priorities should include the recovery and collection of tissues (including equipment costs) from individual stranding events to establish a database of baseline information to compare against anomalous events.

Response: This recommendation is consistent with listed National Priorities, including participation in the National Marine Mammal Tissue/Serum Bank and establishing health reference data on species subject to unusual and mass strandings.

Comment 27: One commenter suggested that long-term (5–15 years) archival of tissues already takes place in a few stranding organizations and those should receive priority for data analyses.

Response: A proposal to conduct a collaborative, retrospective effort to analyze archived samples held by network participants would be consistent with a number of the listed priorities. Anyone interested in using tissues archived in the National Marine Mammal Tissue Bank should follow the tissue access policy published in the 1994 Marine Mammal Health and Stranding Response Program: Program Development Plan. This report can be found on NMFS Office of Protected Resources Reading Room Web page, at: *www.nmfs.noaa.gov/prot_res/*

readingrm/MMHealth/mmhealth.pdf, and the access policy can be found on pages 33 to 35. Alternatively, please contact the Office of Protected Resources (see CONTACT information) for a hard copy. Note that a new access policy is currently under review in NOAA and is anticipated some time in the next year, after grants have been awarded in this grant cycle.

Comment 28: In addition to the several health-related priorities outlined in the Draft Implementation Plan, one commenter believes it would be appropriate to also consider research projects dealing with basic aspects of life history (*e.g.,* age, growth and reproduction) and ecology (*e.g.,* feeding) of marine mammals, particularly those of the special concern (listed in B.2).

Response: Both the Act establishing the Prescott Stranding Grant Program, and the MMHSRP, prioritize research related to the health of marine mammal populations. Projects that collect life history information could be consistent with these statutory priorities if they are conducted to identify health trends or establish and interpret health reference data.

Comment 29: For species of concern, pooling of samples and research efforts should be encouraged to enable investigators to properly address ecological questions and health issues with an appropriate number of samples. Data and samples from Kogia, for example, exist in various locations which, if properly analyzed could provide information on diet, reproductive biology, and aging that would be crucial for successful rehabilitation and release of live-stranded animals.

Response: A collaborative project such as the one proposed could be competitive, and addresses the national priorities to identify health trends and establish health reference data.

Comment 30: Priority should be given also to rescue and rehabilitation of endangered and threatened species.

Response: Although strandings of listed species are relatively rare, these strandings usually do receive elevated response efforts. Because it is impractical to plan and maintain preparedness for rare events, we believe that establishment of a Network that effectively responds to all events may be the best way to ensure adequate response to a listed species stranding.

Comment 31: NOAA fisheries is already preparing a web-based national stranding database, and already has funding for right whale response, and the Unusual Mortalities Working Group, therefore these should not be listed as priorities for a grant.

Response: The right whale and Unusual Mortalities efforts are existing funded programs, and related priorities have been removed from the priority list. However, the priority related to a national stranding database has been modified to reflect its intent to encourage proposals to improve network members' data collection and input capabilities—for example to fund salary for a data management person for data entry for a network member, to upgrade computers, etc. The priority has been reworded to better identify this intent.

Comment 32: A commenter suggested that the National priority related to ''upgrading equipment for electronic access to the national stranding database * * *'' should be repeated as a Southwest Regional priority.

Response: This is not a regional priority for the funding year. However, an applicant from the Southwest can submit a proposal to upgrade equipment for this reason under the National Priority. That application would then compete for funds within the National pool rather than the Regional pool.

Comment 33: Priorities that are listed in multiple regions might be combined as national priorities, i.e., public education and the development of oil-spill responses.

Response: Because proposals will compete within regional or national ''pools'', depending on the priorities addressed, we have elected to keep overlapping priorities separated. The scope of the project, along with the applicant's statement regarding the priority addressed, will then determine which pool a proposal will compete within.

Comment 34: The impetus for the Program was to provide funds to those facilities that for years have been absorbing the rising costs of stranding response and rehabilitation. This should be listed in the National Priority sections, as the number one priority.

Response: We agree that recognition of the volunteer stranding network was the impetus for the development of the Prescott Stranding Grant Program. However, the Marine Mammal Rescue Assistance Act's objectives do not include awards for historical participation, nor are federal grants the appropriate mechanism for reimbursement of funds for prior year efforts. While reimbursing Network participants for past efforts is not listed as a priority for implementation of this Program, eligibility to compete for funds under this Program is based in large measure on past and continuing participation as an active Network member.

Comment 35: Priorities seem to impose the specter of additional work (research proposal to obtain grant funds) on long-time volunteer stranding network participants struggling to fund current operations related to their already significant responsibilities.

Response: The Prescott Stranding Grant Program is obviously not mandatory and is not intended to place additional requirements on network participants. The competitive application process is required by the Department of Commerce Federal Assistance funding policies. Note, though, that operations costs will be funded with a successful grant application, therefore network participants can receive funds for operational costs for the upcoming year.

Comment 36: There are no regional priorities to fund people and equipment to help network participants. The 1-year term precludes continued help in offsetting additional staff costs. Applicants and reviewers should have broader discretion and more flexibility regarding how to apply the priorities.

Response: Operational costs are a national priority and all of the regions list priorities that encompass equipment and salaries, though these may be identified by phrases such as ''enhance operations''. The Prescott Stranding Grant Program relies on annual appropriations, therefore we cannot provide assurances during this first funding cycle regarding the availability of funds in the future. We have revised and reordered these priorities to provide applicants with specific guidance, while allowing reviewers some discretion in assessing competitive applications.

Comment 37: A commenter suggested that priorities for methods or equipment should identify the conservation or management purpose.

Response: In this Request For Proposals, we have folded operational cost priorities into the two categories of ''Recovery, Treatment and Release'', and ''Data Collection''. Applicants for operational costs are directed to identify how those costs meet the needs identified under these priorities. For example, a proposal for funds to cover veterinary costs, animal food, pool filtration devices, and water quality tests should be justified by identifying how these costs relate to needs for treatment and recovery of the types and numbers of strandings anticipated for a particular facility. Alternatively, a proposal for necropsy equipment, vehicle costs, salary for a stranding technician, costs of serological analyses, and equipment upgrades to allow access and data entry capabilities for the national stranding database would be

justified under the Data Collection objective.

Comment 38: A commenter suggested that, in addition to the basic needs that should be funded by the Prescott Stranding Grant Program, substantial funds should also be provided to study the survival rates and ecological role of rehabilitated individuals once they are released.

Response: Monitoring the survival of released animals is listed as a National, Northeast (under their data collection priorities in the Draft Implementation Plan) and Alaska Region priority. While important, this is not considered a high priority for the upcoming year by the other regions.

Comment 39: One commenter asked for clarification regarding the lack of Northwest Regional priorities for recovery and treatment of marine mammals.

Response: Although the Northwest Region did not list priorities under the ''Recovery and Treatment'' category in the Draft Implementation Plan, their ''Facility Operations Costs'' priority list included enhancement of facilities and network operations related to handling and treating sick and injured marine mammals. In this document these priorities have now been folded into the ''Recovery, and Treatment'' category.

Comment 40: Under the ''recovery and treatment'' priorities list, one commenter suggests that the Northeast Region should add the formation of a committee or working group to review and recommend response to out of habitat situations.

Response: Currently, the NMFS National Coordinator consults with existing working groups, such as the Unusual Mortalities Working Group, the Pinniped or Cetacean Release Criteria consultants, or ad hoc groups that include experts on the species of concern, to develop proper response to out-of-habitat events. Funds for response, when necessary, have generally come from existing sources of money. Rather than requesting a proposal through the Prescott Stranding Grant Program for the formation of a regional committee, the National Coordinator will take the lead in formalizing this process if it becomes necessary.

Comment 41: A commenter suggested that the NMFS Northeast Regional priority related to outreach efforts in areas where humans and protected species overlap should not identify specific areas since there are many areas of concern, and should focus primarily on reducing effects on the population, versus reducing the subsequent need for rehabilitation.

Response: The Region intended that this priority invite proposals to reduce injuries currently caused by the effects of human interactions with marine mammals on or near breeding grounds, and particularly at rookeries. Reducing the need for rehabilitation is an appropriate primary goal under the priority category of ''Recovery, Treatment or Release'', but since the priority is not intended to be site-specific, rookery names are no longer listed. We agree that the overall goal should include reduction of the effects of human interactions on the health of marine mammal populations due to, for example, habitat loss or transmission of disease and nuisance behaviors from facilities to the wild.

Comment 42: One commenter suggested that we add *Erysipelothrix rhusiopathiae* to the list of priority diseases to be investigated in 2001–2002.

Response: The FY 2002 Conference Report (House Report 107–278) provides $150,000 for *Erysipelothrix rhusiopathiae* this fiscal year. Due to this special appropriation, we believe *E. rhusiopathiae* does not have to be included in the priorities for the Prescott Stranding Grant Program this year.

Comment 43: One commenter asked that priority be given to applications for data collection grants from smaller facilities in all regions, and another one asked that priority be given to smaller facilities for stranding response and live animal treatment.

Response: There is no indication of Congressional intent to constrict the ability for all network participants to compete equally for these funds, nor was it identified as a priority by all regions. However, the Southwest Region has determined that for their Region, applicants from smaller facilities will receive priority for stranding response and live animal treatment.

Comment 44: A commenter suggested that the Southwest Region's priority identified as ''conducting complete necropsies on dead California sea lions to determine the incidence of human interactions such as gunshot'' be changed to ''conducting complete necropsies, including histopathology on all marine mammals that die or are euthanized in marine mammal rehabilitation centers to determine cause of death or euthanasia'.

Response: The suggested modification is actually quite different from the stated priority. During this funding cycle, providing funds for necropsies on animals that die during rehabilitation efforts is not a regional priority; therefore, this priority has not been added to the Southwest Region's list. However, a request for funds to conduct ongoing procedures such as this one could be included in a proposal for operational costs under the Southwest's rescue and rehabilitation priority to enhance stranding response and live animal treatment in smaller facilities, if necropsies are conducted to provide information necessary to monitor and improve the effectiveness of treatment practices.

Comment 45: One commenter suggested that network participants that collect tissues and data be compensated for their efforts, rather than restricting compensation to those that are conducting analyses or research with the data or tissues.

Response: Applicants for projects that require input from other network participants are asked to include reimbursement costs to the LOA holder or Network member collecting materials from stranded marine mammals, and to include those network participants as Cooperators on their proposal.

Comment 46: A number of commenters stated that this program should not fund a national stranding workshop.

Response: This priority has been removed from the list because it was too similar to a procurement, which is an inappropriate application of this grant program.

Comment 47: A commenter suggested that protocol for response to individual live strandings and criteria for rehabilitation candidates should be developed to provide facilities with guidance regarding basic indicators of animals that can be successfully rehabilitated.

Response: Rehabilitation and release criteria, currently under development by the MMHSRP National Program staff, will address this need to some extent. In the interim, the NMFS National and Regional coordinators often call on an ad-hoc group of experts for advice on live stranding response. If further guidance is deemed necessary after release criteria are finalized, NMFS will establish another group of consultants to further develop a beach-triage protocol, such as that identified by the commenter. Funds from the Prescott Stranding Grant Program will not be needed to support this effort.

Comment 48: One commenter suggested that a priority to ''achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible along all U.S. coasts'' be added to the list of priorities in each region.

Response: This priority was added to the National Data Collection priorities,

and related regional priorities have been amended, to reflect this goal of the MMHSRP.

Comment 49: The Northeast Region priorities should include one similar to the first priority on the Southeast Regional list regarding enhanced collection and evaluation of human interaction evidence from stranded marine mammals.

Response: This priority has been added to the list of the priorities for the Northeast Region. Costs for training network members to detect and document human interaction evidence are requested for inclusion in the proposed budget.

Comment 50: One commenter suggested that expansion of this grant program to include sea turtles would be useful.

Response: The Prescott Stranding Grant Program was instituted as an amendment to the MMPA, and does not cover sea turtle stranding response.

Comment 51: One commenter asked for an explanation of ''cooperative projects * * * to achieve Marine Mammal Health and Stranding Response objectives'' as listed in the Northeast Regional priority 1.

Response: Marine mammal strandings are a valuable source of information and material for studies that support the MMHSRP goals, particularly when response includes in-depth necropsies and data or tissue collection. The value of each stranding event, particularly of fresh dead animals, can be maximized by reaching out to experts from a variety of backgrounds. With this priority, the Northeast Region is encouraging network members to submit proposals to conduct studies supporting MMHSRP goals through partnerships with a variety of experts, including some that may not be within the current network.

Comment 52: One commenter asked that we mention something directly related to necropsy sample archive/storage in the priority regarding archival of samples.

Response: Numerous published protocols exist regarding appropriate sampling methods for real-time analyses or for archival of samples for specific research purposes (genetic studies, development of health reference data, health trend monitoring, etc.). For example, sampling protocols are included in two publications posted on the NMFS Protected Resources Web site, at: *http://www.nmfs.noaa.gov/prot__res/readingrm/Protocols/pinnipednecro.pdf* and, *http://www.nmfs.noaa.gov/prot__res/readingrm/NIST4529.pdf.*

Comment 53: One commenter suggested that the development of greater capacity in existing rehabilitation facilities should be added to the priority for facility renovations in the Northeast Region.

Response: The priority for the Northeast Region has been broadened to ''Renovating rehabilitation space for marine mammals, to include expansion of holding capabilities within existing facilities.'' This priority includes facility improvements, as well as renovations that result in greater capacity, such as the addition, repair, or replacement of pools. The intent of the Prescott Stranding Grant Program, however, is not to fund the construction of entirely new facilities.

Comment 54: One commenter identified a study of the pox virus in seals and its effect on both survivability and releasability of these animals as a priority for the Northeast Region.

Response: Seal pox is an emerging problem in the Northeast Region, particularly with the recent increase in ice seal strandings. Although this is not one of the priority diseases for this funding cycle, a proposal to study this problem could be submitted under the national priority to evaluate the incidence and impacts of marine mammals diseases, which has been expanded to include diseases that effect survival of marine mammals. Note that a study that requires collection of animals from the wild or invasive procedures beyond those generally used to rehabilitate and release marine mammals may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits are in place. Information on permit requirements and applications procedures can be found at: *http://www.nmfs.noaa.gov/prot__res/PR1/Permits/pr1permits__types.html.*

Comment 55: One commenter indicated that priorities in the Northeast Region, and perhaps nationally, should include a study on the survivability of marine mammals that have been released after treatment for severe lung worm infections.

Response: Monitoring of released animals to evaluate success is a National, Northeast, and Alaska priority. Additionally, although a study of the effects of lungworm infections on survival of released marine mammals has not been listed as a specific priority disease for this funding cycle, a proposal to study this problem could be submitted under the expanded National priority to evaluate the incidence and impacts of diseases and conditions that affect survival of marine mammals. Note that a study that requires procedures beyond those generally used to rehabilitate and release marine mammals, such as measurements of dive profiles of recovering or rehabilitated animals, may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits are in place. For information on permit requirements and applications procedures, call the NMFS Office of Protected Resources (*see* **CONTACTS**) or view the following Web site: *http://www.nmfs.noaa.gov/__res/PR1/Permits/pr1permits__types.html.*

Comment 56: One commenter suggested that establishing a native liaison in Alaska should be a priority to effectively bridge and conduct outreach between the stranding network and the many different cultures found along coastal Alaska, and to conduct outreach and increase awareness of and response to strandings.

Response: A proposal from a network member, or a group of network members, to establish this type of position could address the Alaska Region's priority to enhance stranding response throughout the state.

Comment 57: One commenter suggested that funds are needed to facilitate response to strandings in remote areas in Alaska due to the high cost for gasoline and other commodities in these areas.

Response: The priorities have been revised and re-grouped in this Request For Proposals. Under these revisions, a successful proposal for these funds could be submitted as operational costs under Alaska's priority to enhance stranding response in rural areas.

Comment 58: One commenter suggested that, if possible, samples should be collected from stranded marine mammals along the Alaska coastline for potential genetic analysis, contaminant analysis, parasite, pathology, and other studies.

Response: The Alaska Region's priority to improve level A data collection has been amended to encourage Level B and C data collection. A successful proposal that would result in increased sample collection following appropriate protocols would address this priority.

Comment 59: One commenter strongly supported the need to expand and support an ''infrastructure'' for a better stranding response in Hawaii, and suggested that this should be among the highest priorities for the Region.

Response: The priorities are not ranked, rather all of those listed for this grant cycle are high priority for each of the Regions. Note that this priority has been revised to reflect the need to promote collaboration among network members in Hawaii.

Comment 60: Two commenters supported an addition to the Northeast Region's priority to enhance necropsy facilities, as well as other equipment and enhancements to improve level B and C data collection and scientific research.

Response: A priority has been added to the Northeast Region's list to ''Enhance necropsy facilities and other improvements to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible.''

Comment 61: One commenter suggested that it was very important to improve the necropsy techniques of the stranding program in the Northeast Region.

Response: An application to develop training materials, acquire, or conduct necropsy training throughout the Northeast Region could be successfully submitted under the priority to encourage level B and C data collection. Travel funds for network participants should be included in the application, if possible.

Comment 62: One commenter indicated that the Southwest Region's priorities did not include facility operations costs, which should be explained.

Response: The Southwest and Southeast Regional operational priorities were mistakenly combined in the Draft Implementation Plan. The Southwest included 5 operational priorities, now folded into their Rescue and Rehabilitate priority list in this document.

Funding

Comment 63: One commenter asked whether NOAA/NMFS will consider partial funding for acceptable projects if more proposals meet funding criteria than money is available.

Response: Following the NOAA Grants process, after a project has successfully competed and been selected for funding, pre-award negotiations occur between the applicant and NOAA/NMFS representatives. This process can include agreements to partially fund projects that otherwise fall below the available funding level.

Comment 64: A number of commenters indicated that the Federal share of the grant is supposed to be $100,000, with an additional 25 percent for non-federal matching funds.

Response: We originally interpreted the Marine Mammal Rescue Assistance Act's language limiting the grant to $100,000 to be consistent with general grant principles that define a grant as including both the Federal and non-Federal share. However, after soliciting further clarification and reviewing the legislative history of the Act, we have determined that there is sufficient information to reveal Congressional intent to limit the Federal portion of the award, not the amount of the grant itself, to $100,000. We have changed the guidance in this document to reflect this new interpretation; the Federal (75 percent) portion of the grant will be up to $100,000 and the non-Federal match will be a minimum of 25 percent of the total grant amount. For a project for which 75 percent of the grant is the maximum $100,000 in Federal funds, a minimum of $33,334 in matching funds (25 percent of $133,334) would be required. Note that proposals can be submitted for projects costing more than $133,334, however the Federal share can be no more than $100,000.

Comment 65: One commenter asked that NMFS clarify that the non-Federal match can consist of in-kind services.

Response: The cost sharing discussion in the Draft Implementation Plan specifically stated that cost share requirements could be met with in-kind contributions and included a long discussion regarding in-kind contributions. This discussion has been repeated in this document, and it cites the Federal regulations regarding cost sharing requirements.

Comment 66: One commenter asked that NMFS explain the phrase '' * * * not required to award any specific grant or cooperative agreement, nor are we required to obligate the entire amount of funds provided.''

Response: This language is standard for Notices soliciting applications for discretionary Federal assistance funds. The language makes clear that the Notice does not infer entitlement rights to the funds to any applicant. The final selection decisions, funding amounts and project descriptions will be decided by NOAA.

Comment 67: Three commenters requested clarification or justification for the agency's decision not to fund any multi-year projects this year, despite the fact that many scientific research projects, particularly those relating to trends in marine mammal health, yield more beneficial results over time.

Response: Based on the guidance we have received regarding Congressional intent, we have decided to implement the Prescott Stranding Grant Program during this first funding cycle in a manner that broadly distributes the funds and that does not foreclose future options by obligating future funds that may be appropriated. Additionally, there is no guarantee that future funds will be available, since they depend upon annual appropriations from Congress. Therefore, for this grant cycle, we have decided not to fund projects that require funding obligations in future years. As noted in the Draft Implementation Plan and in this document, we will fund a project for up to 3 years if the Federal share of the project does not exceed $100,000 for the entire duration of the project. Additionally, if work will continue for some period after the money is obligated, the grantee may notify the grants manager and request a no-cost extension for the grant. We will revisit this policy for upcoming grant cycles, and foresee the possibility that multi-year proposals may be accepted in the future.

Comment 68: Two commenters suggested that recognition should be afforded for the applicant's efforts to value cost sharing portion of items, including in kind contributions.

Response: NMFS will follow the Federal guidelines regarding consideration of the valuation of cost sharing proposals, including in-kind contributions. These guidelines are summarized in the Draft Implementation Plan and in this Notice, and are detailed in the regulations found at 15 CFR 14.23 and 24.24. For successful applications, lingering questions regarding cost sharing can be resolved during the negotiations that follow selection of applications.

Selection/Review Process

Comment 69: A number of commenters asked how the funds will be equitably distributed among the Regions.

Response: Applications will compete regionally; that is, they will be reviewed, evaluated, and ranked on a regional or national basis depending on the priority addressed by the applicant. As discussed in the implementation plan, once an evaluation has been conducted, MMHSRP staff, with input from the NMFS Regional Administrators and Office Directors, the Marine Mammal Commission, and the USFWS, will develop recommendations for equitable distribution of the Prescott Stranding Grant Program funds among the NMFS stranding regions. Justification for distribution will consider recent strandings statistics, including the occurrence of episodic events such as El Nino, as well as anomalous stranding events and recent unusual mortality events. The Assistant Administrator for Fisheries will review the recommendations and comments of the review team and ultimately determine the projects to be funded.

The distribution formula chosen this year may be revised in future funding cycles. Qualified applications during the year to address unanticipated catastrophic events, such as mass strandings, will be funded non-competitively, likely on a first-come first-serve basis.

Comment 70: One commenter indicated that the success of the proposal at addressing listed priorities did not appear to be considered in the ranking and scoring criteria.

Response: The initial screening process will ensure that only applications that are qualified, which include those that address the listed priorities, receive further review by technical reviewers. Additionally, the guidance to technical reviewers includes consideration of soundness of project design, which as described include consideration of how the project achieves the goals of the MMHSRP and the Prescott Stranding Grant Program.

Comment 71: One commenter suggested that a 10 percent criteria be added to consider how well the proposed study builds collaboration and/or extends the capabilities of the program or project.

Response: We recognize and encourage collaborative efforts, particularly for data collection projects, and have included collaboration as a factor to be considered by technical reviewers when weighting experience and qualifications of personnel. In future years, we will consider adding a weighting criteria for collaboration such as the one suggested

Comment 72: One commenter requested clarification regarding two aspects of scoring, ranking, and selection guidance in the draft implementation plan; noting that the ''acceptable technical score'' appeared to be arbitrary and unspecified; and questioning the meaning of the statement that awards may not be made to all of the highest technically ranked applications. The commenter suggested that the applications should be ranked, redundant applications with lower scores should be removed from the list, and then all funds should be distributed down the ranks until funds are depleted.

Response: To ensure that Federal funds administered through grants programs are distributed responsibly, we have established a minimum standard that must be met for an application to be considered for funding. Commonly, only applications for Federal funds that receive excellent or very good scores from peer reviewers are further considered for funding, or alternatively, numerical standards are established based upon the historical scores and rankings of applications received during previous grant cycles for a particular program. Because the Prescott Stranding Grant Program has no previous grant cycle to draw upon, we have selected a minimum standard of 60 percent, similar to that used academically to denote a failing grade. This 60 percent cut-off is identified in the first paragraph of the Technical Evaluation section in the Draft Implementation Plan. Applications that cannot achieve a minimum score of 60 percent will not be considered for funding during this funding cycle, and applicants will receive a summary of comments from the panel and review teams.

The statement that not all of the highest technically ranked applications may be awarded grants reflects standard NMFS grants language when a selecting official reserves the discretion to use policy factors to make final agency funding decisions. The Assistant Administrator is the Selecting Official for the Prescott Stranding Grant Program, and final selections are essentially at his discretion, within the constraints identified in this document. In this case, the Selecting Official can deviate from panel ranking recommendations, even if an application has received a high ranking, if he has policy concerns about costs, need, geographical distribution of projects, duplication with other federally funded projects, or equitable distribution of funds among the regions. However, any deviations from panel recommendations must be justified in writing and based on the policy factors that are identified in the notice.

Comment 73: One commenter suggested that we include a participant from the Working Group for Marine Mammal Unusual Mortality Events in the grant review and selection process to ensure the working group's concerns are represented.

Response: Past and present members of the Working Group will be among those asked to participate on the technical review panel.

Comment 74: One commenter suggested that at least one member of the panel should be an individual from a marine mammal rehabilitation center in a managerial position and intimately involved in the day-to-day activities of animal care and treatment, and suggested this should be noted in our discussion of the review panel process.

Response: We will be contacting dozens of individuals from varied organizations, including network participants, rehabilitation facilities, government managers and scientists, academics, and constituent groups, to ask them to volunteer to participate as technical reviewers of Prescott Grants proposals. The total number of reviewers that will be selected depends on the number of volunteers, the number of applications that come in, and the priorities addressed on those applications. At least two panels will be necessary, to divide west coast, east coast, and headquarters proposals into 2 review pools. Reviewers will be assigned to each panel in a manner that prevents conflict of interest (for example, applicants will not be able to review other applications within their competitive pool), and that applies reviewers' areas of expertise appropriately. Given these goals, while it is likely that panelists will include reviewers that are senior staff at rehabilitation facilities, we cannot require nor ensure that this will be the case.

Comment 75: One commenter expressed concern that the initial ''regional review of proposals'', rather than the simultaneous coordinated review indicated in the law, could unfairly or inconsistently preclude meritorious proposals from the review mandated by Congress.

Response: NMFS grant procedures require an initial review of proposals for completeness of applications, and to determine whether the minimum program and eligibility requirements are met. The initial review will not include determinations regarding the merits of the proposals beyond whether or not the proposal addresses one of the priorities established for this grant cycle. Note that in this document, we have increased the period allowed for application preparation beyond that forecasted in our original timeline. We encourage applicants to apply early so that problems found during these initial reviews, such as incomplete forms, can be resolved prior to the end of the application period. Note that we are under no obligation to do these early reviews, however, and insufficient time and resources may preclude our ability to return early proposals for completion.

Comment 76: One commenter indicated that the screening and evaluation process should closely track the three important activity areas identified by Congress so as not to discourage applications for less lofty but much needed existing stranding efforts.

Response: In the Draft Implementation Plan, the priorities listed for the Prescott Stranding Grant Program were listed under the three categories identified by Congress. The priorities have been revised in this document by folding the operational

priorities into the rehabilitation and release, and data collection categories. This reordering, as well as many of the responses to comments in this section, should more explicitly illustrate our interest in receiving proposals for operational costs that support ongoing stranding network efforts. Our guidance to technical reviewers includes weighting factors that favor proposals that are consistent with these listed priorities.

Comment 77: One commenter suggested that reviewers should be made familiar with the specific exemptions under the MMPA for coastal Alaska Natives.

Response: We will ask all technical reviewers to read this document completely prior to reviewing applications. The discussion of the Alaska Native exemptions in the comments and responses will provide them with important background for reviewing Alaskan proposals.

Application

Comment 78: One commenter indicated that the grant application forms are not well designed for this program, and included irrelevant fields and insufficient space to describe the proposed project. A template would be useful.

Response: The Federal grants process requires submission of a number of forms, that are currently generic. Very few specialized forms exist for specific grants programs, however, one can be developed for the Prescott Stranding Grant Program. Once developed, the form must be reviewed and approved by the Office of Management and Budget to be consistent with the Paperwork Reduction Act. The development, public review, and approval of a specialized form may take up to 2 years. Depending on the administrative demands of implementation of the Prescott Stranding Grant Program, we will look into modifying these forms in the upcoming year.

Section III D. of this document provides an outline for the project description, which can be up to 10 pages long and is an attachment to the application form, not a section of the form.

Some assistance in filling out the required forms and in avoiding common problems can be found at the NOAA Grants homepage, specifically, at: *http://www.rdc.noaa.gov/grants/index.html.* We have also posted an application package, as well as a mock application, and questions and answers related to applications for the Prescott Stranding Grant Program on our Web site at: *http://www.nmfs.noaa.gov/prot__ res/PR2/Health__and__Stranding__Response__Program/Prescott.html.*

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Furthermore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

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.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Dated: January 4, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–783 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123101A]

Marine Mammals; File No. 482–1653

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that James Gilbert, Ph.D., University of Maine, Department of Wildlife Ecology, 210 Nutting Hall, Orono, Maine 04469 has been issued a permit to take harbor seals (*Phoca vitulina*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On November 14, 2001, notice was published in the **Federal Register** (66 FR 57041) that a request for a scientific research permit to take harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 4, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–886 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

National Reconnaissance Office

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–4

SYSTEM NAME:

Freedom of Information Act and Privacy Act Files.

SYSTEM LOCATION:

Management Services and Operations, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit Freedom of Information Act (FOIA), Privacy Act, and Mandatory Declassification Review Requests and administrative appeals to the National Reconnaissance Office; individuals whose requests and/or records have been referred to the NRO by other agencies; and in some instances includes attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the NRO personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of records created or compiled in response to FOIA, Privacy Act, and Mandatory Declassification Review requests and administrative appeals and includes: The original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal; and documents submitted for pre-publication review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations to implement the provisions of 5 U.S.C. 552, The Freedom of Information Act and 5 U.S.C. 552a, as amended, The Privacy Act of 1974; National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; E.O. 12333; E.O. 12958; E.O. 12968.

PURPOSE(S):

This system is maintained for the purpose of processing access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act, and requests and administrative appeals for Mandatory Declassification Review under the applicable executive order(s) governing classified national security information; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the NRO in carrying out any other responsibilities under the FOIA, the Privacy Act, and applicable executive orders; and to process requests for pre-publication review case processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system maintained in computers and computer output products.

RETRIEVABILITY:

Requester's name, request case number and subject keywords.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to the Information Access and Release Center staff whose official duties require such access. The electronic database files are password protected; hardcopy records are stored in a locked file room with restricted access.

RETENTION AND DISPOSAL:

Records are temporary, to be destroyed when two years old or sooner if no longer needed for administrative use. Records pertaining to FOIA and PA appeals are to be destroyed six years after final determination or six years after the time at which a requester could file suit, or three years after final adjudication by courts, whichever is later. Computer files will be deleted; hardcopy files will be shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Management Services and Operations, Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, and any aliases or nicknames, address, Social Security Number, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state)

under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the FOIA, the Privacy Act, or the applicable executive orders governing classified national security information; the agency records searched in the process of responding to such requests and appeals; NRO staff assigned to handle such requests and appeals; other agencies or entities that have referred to the NRO requests concerning NRO records, or that have consulted with the NRO regarding the handling of particular subjects; and submitters or subjects of records or information that have provided assistance to the NRO in making access or amendment determination. Pre-publication materials submitted by the authors or offices sponsoring the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the processing of a FOIA/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the National Reconnaissance Office hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–614 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–21

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Office of Security, Personnel Security Division, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military and contractor personnel who have been nominated or investigated for security clearances and program accesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, agency identification number, employee's geographic work location, employer, work telephone number, date and place of birth, home address and home telephone number, dependents' names, individual's background investigation and polygraph data, interview and adjudication information, all other information such as that found on standard government forms SF 86 and 1879, appeal and referral data, program access status, classification number, security file location, and administrative and investigatory comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301 Departmental Regulations; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

PURPOSE(S):

The information is used for granting security program accesses to NRO personnel; to maintain, support, and track personnel security administrative processing; to provide data for day-to-day security functions; and to conduct security investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To contractors and other Federal agencies for purposes of protecting the security of NRO installations, activities, property, and employees; to facilitate and verify an individual's eligibility to access classified information; and to protect the interests of National Security. Disclosure must be approved in writing by the NRO Director of Security or his/her designee.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, Social Security Number, agency identification number, employer,

employee's geographic work location, date and place of birth, and administrative comments.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, retained for 15 years after inactivation; noteworthy files are retained for 25 years after inactivation. Audio and video tapes of polygraph examinations and interview are temporary and are re-used or destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security Division, Office of Security, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–615 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–19

SYSTEM NAME:

Customer Security Services Personnel Security Files.

SYSTEM LOCATION:

Management Services and Operations, Customer Security Services, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractor candidates nominated for security clearances and program accesses but do not have an organizational security infrastructure to support their applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employer, work telephone number, date and place of birth, home address, home telephone number, foreign travel and foreign contacts as well as the other categories on the Standard Form 86 and the signed non-disclosure agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to nominate candidates for security clearances and program accesses; to record agreements to protect classified information; and to report foreign travel and foreign contacts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To corporate sponsors and other Federal agencies for purposes of facilitating and verifying an individual's eligibility for access to classified information.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Individual's name and Social Security Number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, retained for 15 years after the last action in the file. Noteworthy records are temporary, but must be retained for 25 years after the last action in the file. The non-disclosure agreements are temporary records retained for 70 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Customer Security Services, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature.

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by other security documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–673 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office

of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2002.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 9, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Infants and Toddlers with Disabilities Program (Part C) of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 168.

Abstract: States are required to submit an application to receive funds. An approved application remains in effect until modifications are needed resulting from a change in policy, procedures, or assurances.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her Internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–851 Filed 1–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States of America, and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the joint determination by the Government of the United States of America, and the Government of the Republic of Korea pursuant to Article VIII(C) of the Agreement for Cooperation that the provisions in Article XI of that Agreement may be effectively applied for the alteration in form or content of U.S.-origin nuclear material contained in irradiated nuclear fuels from pressurized water reactors, CANDU reactors, and research reactors at the Post Irradiation Examination Facility (PIEF), the Irradiated Material Examination Facility (IMEF), and the DUPIC Fuel Fabrication Facility (DFDF) at the Headquarters of the Korea Atomic Energy Research Institute, in accordance with the plan contained in KAERI/AR–606/01 (KAERI/AR–583/00-rev.1) and KAERI/AR–607/01 (KAERI/AR–584/00-rev.1), with appendices, dated September 3, 2001. Any activities additional to the plan or changes in the equipment in the PIEF, IMEF, or DFDF will be reviewed by both parties to ensure the general consistency with the scope and objectives of this Joint Determination. Reference is made to the Joint Determinations signed by the Government of the United States of America and the Government of the Republic of Korea on March 29, 1996, and April 8, 1999, covering the same facilities and similar activities. These facilities continue to be acceptable to both parties pursuant to Article VIII(C) of the Agreement for the sole purpose of alteration in form or content of irradiated fuel elements for post-irradiation examination and for research, development, and manufacture of DUPIC fuel powders, pellets, and elements for the period ending March 31, 2007.

In accordance with section 131, of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than January 29, 2002.

Dated: January 8, 2002.

Trisha Dedik,

Director, Office of Nonproliferation Policy, National Nuclear Security Administration.

[FR Doc. 02–856 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 01–84–NG, 01–76–NG, 01–83–NG, 01–88–NG, 93–34–NG, 01–73–NG, 01–85–NG, 01–90–NG, 01–86–NG, 99–106–NG, 00–71–NG, 01–87–NG, 01–86–NG, 00–71–NG, and 01–89–LNG]

Office of Fossil Energy; Phibro Inc., Enron Canada Corp., Puget Sound Energy, Inc., Suncor Energy Inc., Wisconsin Public Service Corporation (Successor of Wisconsin Fuel & Light Company), Crestar Energy Marketing Corporation, Jonan Energy LTD. (Formerly Jonan Gas Marketing, Inc.), Energyusa-TPC Corp., The Consumer's Gas Company LTD., Sunoco Inc., The Consumer's Gas Company LTD., Boston Gas Company d/b/a KeySpan Energy Delivery New England; Orders Granting, Amending, Transferring and Vacating Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2001, it issued Orders granting, amending, transferring and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 7, 2002.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1744	12–5–01	Phibro Inc. 01–84–NG	400 Bcf	400 Bcf	Import and export natural gas, including LNG from and to Canada and Mexico, beginning on January 1, 2002, and extending through December 31, 2003.
1745	12–5–01	Enron Canada Corp. 01–76–NG	1,800 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2003.
1746	12–5–01	Puget Sound Energy, Inc. 01–83–NG	50 Bcf		Import natural gas from Canada, beginning on December 6, 2001, and extending through December 5, 2003.
1747	12–11–01	Suncor Energy Inc. 01–88–NG	127.66 Bcf		Import natural gas from Canada, beginning on January 1, 2002, and extending through December 31, 2003.
856–A	12–11–01	Wisconsin Public Service Corporation (Successor of Wisconsin Fuel & Light Company) 93–94–NG.			Transfer of long-term authority.
1736	12–12–01	Crestar Energy Marketing Corporation 01–73–NG.			Errata Notice: Correction of the term of authority to July 12, 2001, and extending through July 11, 2003.
1748	12–13–01	Jonan Energy Ltd. (Formerly Jonan Gas Marketing, Inc.) 01–85–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1749	12–17–01	EnergyUSA–TPC Corp. 01–90–NG	73 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2003.
1750	12–17–01	The Consumer's Gas Company Ltd. 01–86–NG, 99–106–NG, 00–71–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2002.
1751	12–19–01	Sunoco Inc. 01–87–NG	200 Bcf	400 Bcf	Import and export natural gas from and to Canada, beginning on February 2, 2002, and extending through January 31, 2004.
1637–A	12–26–01	The Consumer's Gas Company Ltd. 00–71–NG, 01–86–NG.			Order vacating blanket import authority.

ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1752	12–27–01	Boston Gas Company d/b/a/KeySpan Energy Delivery New England 01–89–LNG.	600,000 Mcf.	.....	Import of LNG from Canada, over a two-year term beginning on the date of first delivery.

[FR Doc. 02–857 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

(Eastern Washington Reinforcement)

Grand Coulee-Bell 500-kV Transmission Line Project

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: Bonneville intends to prepare an EIS on the proposed construction, operation, and maintenance of an 84-mile-long 500-kilovolt (kV) transmission line in Douglas, Grant, Lincoln, and Spokane Counties, Washington. The new line would start at Bonneville's Bell Substation in Spokane, and proceed west along an existing right-of-way for about 84 miles, terminating at the Bureau of Reclamation's existing Grand Coulee Switchyard at Grand Coulee Dam. The new line would be built mostly on existing right-of-way, and would replace an existing 115-kV wood pole line.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, Bonneville will prepare a floodplain and wetlands assessment as necessary to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

DATES: Written comments on the NEPA scoping process are due to the address below no later than February 11, 2002. Comments may also be made at EIS scoping meetings to be held on January 28, 29, and 30, 2002, at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS to Communications, Bonneville Power Administration—KC–7, PO Box 12999, Portland, Oregon, 97212. You may also call Bonneville's toll-free comment line at 1–800–622–4519; name this project, and record your complete name, address, and comments. Comments may also be sent to the Bonneville Internet address at *comment@bpa.gov.* To be placed on the project mail list, call 1–800–622–4520.

Comments may also be made at EIS scoping meetings to be held on Monday, January 28, 2002, 4 to 8 p.m., at Inland Northwest Wildlife Council Auditorium, 6116 N. Market Street, Spokane, Washington; Tuesday, January 29, 2002, 4 to 8 p.m., at Old Center School Building (Big Bend Community College), 317 Spokane Way, Grand Coulee, Washington; and Wednesday, January 30, 2002, 4 to 8 p.m., at Davenport Elementary School, 1101 7th Street, Davenport, Washington. At these informal open-house meetings, we will provide information, including maps about the project, and have several members of the project team available to answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Mark Korsness, Project Manager, Bonneville Power Administration—TNP–TPP–3, PO Box 61409, Vancouver, Washington, 98666–1409; toll-free telephone 1–800–282–3713; direct telephone 360–619–6326; or e-mail *makorsness@bpa.gov.* You may also contact Inez Graetzer, Environmental Coordinator, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon 97208–3621; telephone 503–230–3786; fax 503–230–5699; or e-mail *isgraetzer@bpa.gov.*

SUPPLEMENTARY INFORMATION: The proposed 84-mile-long 500-kV transmission line would replace an existing 115-kV wood pole transmission line that runs between Bonneville's Bell Substation in Spokane, Washington, and the Bureau of Reclamation's Grand Coulee Switchyard at Grand Coulee Dam. The new line would be located primarily in Bonneville's existing right-of-way corridor. It would be a single-circuit line for the first 75 miles out of Grand Coulee Switchyard and a double-circuit line for the last 9 miles into Bell Substation. The project is needed to increase reliability and to support current and future demand for electricity in Washington State and the Pacific Northwest. The transmission line corridor between Grand Coulee Switchyard and Bell Substation currently contains two 115-kV transmission lines on wood pole structures and three 230-kV transmission lines on two steel lattice structures. Together, these transmission lines can no longer efficiently move power from generation sources east of Spokane to load centers west of Spokane. Replacing one of the 115-kV lines with a 500-kV line would relieve the restricted ability to transmit electrical power along this corridor, provide for future growth, and enhance service reliability to the community and the Pacific Northwest.

This proposed project was originally considered in 1993–1994 and was known as the Eastern Washington Main Grid Support Project. The proposal at that time was to build a double-circuit line between Bell Substation and Grand Coulee Switchyard, with the alternative being to build a single-circuit line. The project was scoped with the public, comments were incorporated into the proposal, environmental analysis was done, and a draft EIS was prepared to be released to the public when the project was cancelled for fiscal reasons.

Alternatives Proposed for Consideration. At this point the alternatives we are considering for evaluation in the EIS is the proposed action and the alternative of not building the line (an alternative we always consider). Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Issues. Bonneville has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help Bonneville ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or

potentially significant impacts that may result from the proposed project.

The potential environmental issues identified for most transmission projects include: land use, cultural resources, visual resources, sensitive plants and animals, erosion/soils, and fish and water resources. The scoping process will help identify the range of environmental issues that should be addressed in this EIS. When completed, the Draft EIS will be circulated for review and comment, and Bonneville will hold several public meetings to receive comments on the Draft EIS. Bonneville will consider and respond in the Final EIS to comments received on the Draft EIS. Bonneville's decision will be documented in a Record of Decision. The EIS will satisfy the requirements of NEPA.

Issued in Portland, Oregon, on January 4, 2002.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–893 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–328–002]

Algonquin LNG, Inc.; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 3, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, with an effective date of December 19, 2001:

Sub First Revised Sheet No. 42A

ALNG states that the purpose of this filing is to comply with the Commission's December 19, 2001 letter order in ALNG's Order No. 637 proceeding. Specifically, ALNG is establishing a mechanism that credits to its firm and interruptible customers the value of gas retained by ALNG in accordance with section 6.2 of the General Terms and Conditions of the FERC Gas Tariff.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–825 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–040]

ANR Pipeline Company; Notice Negotiated Rates

January 8, 2002.

Take notice that on January 3, 2002, ANR Pipeline Company (ANR) tendered for filing amendments to fourteen (14) service agreements that have previously been accepted as negotiated rate agreements.

ANR states that the amendments reflect (1) the inclusion of provisions allowing for maximum daily quantity changes associated with fuel use changes; and (2) revised exhibits effectuating a change in shippers' storage quantities under Rate Schedule FSS. ANR also notes that certain agreements have been amended and are no longer negotiated rate agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–823 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–127–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on December 20, 2001, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 21, 2002:

Fifth Revised Sheet No. 331
Original Sheet No. 331A

CIG states that the proposed tariff provision limits, under certain circumstances, the liability of a municipality in the event its utility defaults on its payment obligations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the

instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–827 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–136–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on January 3, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective February 1, 2002:

Tenth Revised Sheet No. 7
Fourteenth Revised Sheet No. 8
Eighth Revised Sheet No. 8A
Third Revised Sheet No. 8B
Third Revised Sheet No. 8C
Sixteenth Revised Sheet No. 9
Second Revised Sheet No. 13C
Second Revised Sheet No. 13D

CIG states the proposed tariff sheets are being tendered to include a volumetric tolerance level of 100 Dth on Hourly Unauthorized Overrun transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–830 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–70–004]

Columbia Gas Transmission Corporation; Notice of Filing

January 7, 2002.

Take notice that on December 21, 2001, Columbia Gas Transmission Corporation (Columbia) tendered its filing in compliance with the Commission's November 21, 2001 Order (November 21 Order) in the above referenced docket. In the November 21 Order, the Commission accepted for filing 159 service agreements filed pursuant to section 154.1(d) of the Commission's regulations. The Commission also approved the FirstEnergy contracts subject to certain conditions. In particular, the November 21 Order directed Columbia to make a compliance filing consistent with the terms of the November 21 Order within 30 days of the date of issuance of the order.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 10 G Street NE., Suite 580, Washington, DC; and has been sent by first-class mail, postage prepaid, by Columbia to Columbia's firm customers, interruptible customers, affected state commissions, and to each of the parties on the official service list in Docket No. CP01–70–001 and 002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–834 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–61–000]

Dominion Transmission, Inc.; Notice of Application

January 8, 2002.

Take notice that on December 28, 2001, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed an abbreviated application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity to abandon storage Well No. AW–3697 in the Fink-Kennedy/Lost Creek Storage Complex in Lewis County, West Virginia. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Storage Well AW–3697 is currently leaking a small amount of oil around the wellhead. DTI intends to plug the well to stop the leakage; thereby preventing the oil from being released and possibly increasing in the future. DTI claims the abandonment of the proposed facilities will have no significant impact on the environment. DTI will be using existing right-of-ways and access roads, and the appropriate erosion control and site restoration procedures.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or *sean_r_sleigh@dom.com*.

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 January 29, 2002,

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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 either to file comments or to intervene as early in the process as possible.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–817 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–006]

East Tennessee Natural Gas Company; Notice of Negotiated Rates

January 8, 2002.

Take notice that on December 31, 2001, East Tennessee Natural Gas Company (East Tennessee), tendered for filing a Firm Transportation Service Agreement and a Firm Transportation Rate Adjustment Agreement, attached as Appendices A and B to the filing, respectively, under Rate Schedule FT–A.

East Tennessee requests that the Commission grant all necessary waivers and accept for filing the Firm Transportation Service Agreement and Firm Transportation Rate Adjustment Agreement to be effective February 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–821 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–130–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on December 27, 2001, Eastern Shore Natural Gas Company, (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2002.

ESNG states that the purpose of the filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation under its Rate Schedules FSS and SST. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. ESNG states that the tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–828 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–19–000]

El Paso Electric Company; Notice of Application

January 8, 2002.

Take notice that on December 26, 2001, El Paso Electric Company submitted an application pursuant to section 204 of the Federal Power Act to make borrowing under a replacement revolving credit facility in an amount not to exceed $100 million, and to extend the maturity date of the first mortgage bonds relating to the revolving credit facility, and to engage in related transactions for the purpose of refinancing a revolving credit facility that provides up to $70 million for nuclear fuel purchases and up to $50 million (depending on the amount of borrowings outstanding for nuclear fuel purchases) for working capital needs.

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 January 18, 2002. 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 Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–819 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–003]

Gulfstream Natural Gas System, L.L.C.; Notice of Amendment to Certificate of Public Convenience and Necessity

January 7, 2002.

Take notice that on December 28, 2001, Gulfstream Natural Gas System, L.L.C. (Gulfstream), 2701 North Rocky Point Drive, Tampa, Florida 33607, filed in Docket No. CP00–6–003, an application pursuant to section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Gulfstream on February 22, 2001 in Docket Nos. CP00–6–000, 001, CP00–7–000, 001 and CP00–8–000, 001, to amend the certificate and to request certain other authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance

Gulfstream states that it filed the original application for authorization to construct and operate 753 miles of new interstate gas transmission pipeline from various sources in Alabama and Mississippi to electric power generators and local utilities in the State of Florida (the Project) in the captioned docket on October 15, 1999.

Gulfstream states that the amendment requests authorization to (i) phase construction of its certificated pipeline facilities such that a portion of such facilities will be placed into service on June 1, 2002 (Phase I), with the remainder of such certificated facilities being placed into service on or about June 1, 2003, but not later than February 21, 2004, one year following the deadline for completion of the facilities set forth in the February 22 Order; (ii) modify its initial recourse rates to reflect such phasing of construction and to reflect changes in construction costs; and (iii) obtain related approvals. Gulfstream states that the amendment will facilitate construction of Gulfstream's pipeline system to meet growing demand for natural gas in central and eastern Florida.

Gulfstream states that it is requesting the Commission to grant the requested authorizations by March 31, 2002, so Gulfstream can complete its construciton of the Phase I facilities by June 1, 2002, to meet the in-service date requested by its Phase I shippers.

Any questions concerning this application may be directed to P. Martin Teague, Gulfstream Natural Gas System, L.L.C., 2701 North Rocky Point Drive, Tampa, Florida 33607, call (813) 282–6609.

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 January 28, 2002, 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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition

to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–833 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–137–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on January 3, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective February 3, 2002.

Kern River states that the purpose of this filing is (1) to revise Kern River's pooling provisions to add new supply area and market area pools and to set forth a condition on deliveries from market area pools, and (2) to make other minor revisions in the Rate Schedules and General Terms and Conditions of Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket #'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–831 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–134–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

January 7, 2002.

Take notice that on December 27, 2001, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing a cost and revenue study.

Maritimes states that the purpose of the filing is to comply with: (1) Ordering Paragraph (M) of the Federal Energy Regulatory Commission's (Commission) certificate order dated July 31, 1998 in Docket No. CP96–178, *et al.* and (2) Ordering Paragraph (H) of the Commission's certificate order dated July 13, 2001, in Docket No. CP01–154–000. Maritimes & Northeast Pipeline, L.L.C., 84 FERC ¶ 61,130 (1998), and Maritimes & Northeast Pipeline, L.L.C., 96 FERC ¶ 61,077 (2001).

Maritimes states that copies of its filing have been mailed to all customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–838 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–17–001]

Pacific Gas & Electric Company and PG&E Corporation on Behalf of Its Subsidiaries ETrans LLC and Electric Generation LLC; Notice of Application

January 8, 2002.

Take notice that on December 21, Pacific Gas and Electric (PG&E) and PG&E Corporation, on behalf of its subsidiaries, ETrans LLC and Electric Generation LLC, submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment replaces PG&E's Statement of Cash Flows which contained an error.

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 January 29, 2002. 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 Web

at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–818 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–011]

Questar Pipeline Company; Notice of Negotiated Rates

January 8, 2002.

Take notice that on January 2, 2002, Questar Pipeline Company's (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 7, with an effective date of January 1, 2002.

Questar states that the filing tariff filing is being made to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–824 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–000, Docket No. CP02–58–000, and Docket No. CP02–59–000]

SCG Pipeline, Inc.; Notice of Application

January 7, 2002.

Take notice that on December 26, 2001, SCG Pipeline, Inc. (SCG), P.O. Box 102407, Columbia, South Carolina 29224–2407, filed an application for a certificate of public convenience and necessity and related authorizations pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's rules and regulations thereunder. SCG requests authorization for the following:

(i) A certificate of public convenience and necessity authorizing SCG to construct, install, and operate natural gas pipeline facilities in Georgia and South Carolina and to acquire capacity in certain facilities owned by Southern Natural Gas Company (Southern) also located in Georgia and South Carolina;

(ii) A blanket certificate of public convenience and necessity pursuant to part 284, subpart G of the Commission regulations authorizing the transportation of gas for others;

(iii) A blanket certificate of public convenience and necessity under part 157, subpart F of the Commission's regulations authorizing the construction, acquisition, and operation of certain facilities,

all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

SCG asks the Commission to issue a preliminary determination on non-environmental issues by April 1, 2002 and a final certificate order by October 1, 2002 so that SCG will be able to commence transportation services on November 1, 2003.

Any questions regarding SCG's application should be directed to Robert M. Apple, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South Carolina 29223 at (803) 217–1819 or by fax at (803) 217–2104.

SCG proposes to construct and operate approximately 18.14 miles of 20-inch diameter pipeline and appurtenant facilities extending from an interconnect with the Twin 30s pipeline system of Southern in Chatham County, Georgia and traversing through Effingham County, Georgia to a terminus in Jasper County, South Carolina.

In addition, SCG seeks authority to acquire from Southern an undivided ownership interest in 190,000 Mcf per day of capacity on Southern's Twin 30s pipeline system which consists of a two parallel 13.25 mile, 30-inch diameter pipelines extending from an existing interconnection with the liquefied natural gas (LNG) facility on Elba Island, Georgia owned by Southern LNG, Inc. to a proposed interconnect with SCG at Port Wentworth, Georgia. SCG states that it will acquire its undivided interest at a price determined by dividing 190,000 Mcf per day of capacity in the Twin 30s system by the total capacity of the Twin 30s system and multiplying by the net book value of the Twin 30s system as calculated at the time of the transfer. Southern has filed an abandonment application in Docket No. CP02–56–000.

SCG states that its project will have an initial capacity of 190,000 Mcf per day and that the capacity is fully subscribed under a precedent agreement with SCANA Energy Marketing, Inc. (SEMI). SCG states that SEMI will use most of the capacity to provide fuel for a proposed electric generating facility to be constructed by South Carolina Electric & Gas Company (SCE&G) in Jasper County, South Carolina. SCG states that SEMI will use the remainder of the capacity to serve various other firm and interruptible markets in the Southeast. SCG estimates that its proposed project will cost approximately $36.4 million.

SCG proposes to provide open access firm and interruptible transportation services under Rate Schedules FT and IT, respectively. SCG proposes to offer both negotiated and recourse rates and states that it has designed its proposed recourse rates using the straight-fixed variable method. SCG has submitted a

pro forma FERC Gas Tariff for Commission review.

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 January 28, 2002, 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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 either to file comments or to intervene as early in the process as possible.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–832 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–56–000]

Southern Natural Gas Company; Notice of Application

January 7, 2002.

Take notice that on December 26, 2001, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.14 of the Commission regulations for approval of Southern's abandonment of capacity by sale to SCG Pipeline, Inc. (SCG), all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

Southern proposes to abandon by sale to SCG an undivided interest in two parallel 30-inch diameter pipelines owned and operated by Southern equal to 190,000 Mcf per day of capacity from the tailgate of the liquefied natural gas facility of Southern LNG, Inc., on Elba Island in Chatham County, Georgia (LNG Facility) to an interconnection to be constructed with the pipeline facilities of SCG at Southern's meter station near Port Wentworth in Chatham County, Georgia (Twin 30s). Southern states that this sale of capacity in the Twin 30s is being proposed in conjunction with an overall project by SCG to construct a pipeline system from the LNG Facility to Jasper County, South Carolina, pursuant to an application SCG filed concurrently with the Commission in Docket Nos. CP02–57–000, CP02–58–000, and CP02–59–000.

Southern states that the capacity of the Twin 30s is approximately 1,250,000 Mcf per day and greatly exceeds the maximum daily vaporization rate of the LNG Facility. Further, Southern states that this demonstrates that even after the sale of 190,000 Mcf per day of capacity to SCG, Southern will still retain more than enough capacity on the Twin 30s for Southern to take the entire deliverability from the LNG Facility that its downstream facilities are capable of accepting. Southern states that it will continue to operate the Twin 30s.

Southern states that it intends to sell the capacity to SCG for the percentage equivalent represented by the amount of capacity being sold multiplied by the depreciated book value of the Twin 30s as of the first day of the month in which the closing occurs. Southern states that the current capacity of the Twin 30s is 1,250,000 Mcf per day and 190,000 Mcf per day or 15.2 percent of that capacity is being sold, so that is the percentage that will be multiplied by the book value to determine the purchase price. Southern proposes to reduce its net plant by the amount of capital received from its sale of capacity in the Twin 30s and that the reduction will be reflected in Southern's next Section 4 rate case.

Any questions regarding the application should be directed to Patrick B. Pope, General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7126.

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 January 28, 2002, 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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 either to file comments or to intervene as early in the process as possible.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–835 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–83–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 3, 2002, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Twelfth Revised Sheet No. 23A and Substitute Second Revised Sheet No. 23G, with an effective date of January 1, 2002.

Tennessee states that the filing is being made in compliance with the Commission's December 19, 2001 Letter Order, relating to the revised Gas Research Institute surcharges for 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–826 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–040]

TransColorado Gas Transmission Company; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 2, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fortieth Revised Sheet No. 21 and Thirteenth Revised Sheet No. 22A, to be effective January 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect negotiated-rate contract revisions.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–822 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–133–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 8, 2002.

Take notice that on December 31, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 the following revised tariff sheets to become effective February 1, 2002:

Second Revised Volume No. 1

Forty-Fifth Revised Sheet No. 15
Twenty-Third Revised Sheet No. 15A
Forty-Sixth Revised Sheet No. 16
Twenty-Third Revised Sheet No. 16A
Forty-Fourth Revised Sheet No. 18
Twenty-Third Revised Sheet No. 18A
Twenty-Third Revised Sheet No. 19
Twenty-Third Revised Sheet No. 20
Fortieth Revised Sheet No. 21

Original Volume No. 2

Eighty-Ninth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 15, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–829 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–41–000, et al.]

PG&E Dispersed Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 8, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Power Corporation and RAMCO, Inc.

[Docket No. EC02–41–000]

Take notice that on January 4, 2001 PG&E Dispersed Power Corporation (PG&E Dispersed Power) and RAMCO, Inc. (RAMCO) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to consolidate certain jurisdictional facilities. PG&E Dispersed Power proposes to purchase 100% of the ownership shares of RAMCO. The jurisdictional facilities involved consist of RAMCO's market-based rate tariff, contracts, and books and records associated with the sale of wholesale power. RAMCO makes sales at wholesale of capacity, energy, and ancillary services from two 44 MW peaking generating plants interconnected with the transmission system subject to the operational control of the California ISO. Applicants have requested privileged treatment for the Stock Purchase and Sale Agreement between PG&E Dispersed Power and RAMCO.

A copy of this Application was served upon the California Public Utilities Commission and the Governor of California.

Comment Date: January 28, 2002.

2. ATCO Power Canada Ltd.

[Docket No. ER99–3282–004]

Take notice that on December 28, 2001, ATCO Power Canada Ltd, submitted for filing with the Federal Energy Regulatory Commission (Commission) a new market analysis and report of changes in status for ATCO Power Canada Ltd., formerly CU Power Canada Limited.

Comment Date: January 18, 2002.

3. Cleco Power LLC

[Docket No. ER02–686–000]

Take notice that on January 3, 2002 Cleco Power LLC (Cleco) filed a First Revised Service Agreement No. 50 under Cleco Power FERC Electric Tariff, Original Volume No. 1.

Comment Date: January 24, 2002.

4. FMF Energy, Inc.

[Docket No. ER02–687–000]

Take notice that on January 3, 2002, FMF Energy, Inc. (FMF) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of FMF 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.

FMF intends to engage in wholesale electric power and energy purchases and sales as a marketer. FMF is not in the business of generating or transmitting electric power. FMF is closely held corporation with no affiliates.

Comment Date: January 24, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–688–000]

Take notice that on January 3, 2002, the California Independent System Operator Corporation, (ISO), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and King City Energy Center, LLC for acceptance by the Commission. The ISO states that this filing has been served on

King City Energy Center, LLC 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 December 19, 2001.

Comment Date: January 24, 2002.

6. California Independent System Operator Corporation

[Docket No. ER02–689–000]

Take notice that on January 3, 2002, the California Independent System Operator Corporation, (ISO) , tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and King City Energy Center, LLC for acceptance by the Commission. The ISO states that this filing has been served on King City Energy Center, LLC 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 December 19, 2001.

Comment Date: January 24, 2002.

7. Virginia Electric and Power Company

[Docket No. ER02–690–000]

Take notice that on January 3, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement by Virginia Electric and Power Company to Conectiv Energy Supply, Inc., designated as Service Agreement No. 9, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001. Copies of the filing were served upon Conectiv Energy Supply, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of December 12, 2001, as requested by the customer.

Comment Date: January 24, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02–691–000]

Take notice that on January 3, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement for Short-Term Market Rate Electric Power Sales and the Resale of Transmission Rights with The New Power Company.

Under the Service Agreement, the Company will provide services to the customer under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Third Revised Volume No. 4), which was accepted by order of the Commission dated August 30, 2000 in Docket No. ER00–1737–001. The Company requests an effective date of January 1, 2002, as requested by the customer.

Copies of the filing were served upon The New Power Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: January 24, 2002.

9. Southern California Edison Company

[Docket No. ER02–692–000]

Take notice that on January 3, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and the City of Industry Public Utilities Commission (Industry).

The Letter Agreement provides for pre-interconnection activities including engineering, design, procurement and preparation of specifications. Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: January 24, 2002.

10. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–693–000]

Take notice that on January 3, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing an Amended and Restated Confirmation Agreement between Deseret and Utah Associated Municipal Power Systems (UAMPS) for a unit commitment service without reserves pursuant to Schedule B of the Western Systems Power Pool Agreement. Deseret requests an effective date of October 1, 2001. A copy of this filing has been served on UAMPS and counsel to the WSPP.

Comment Date: January 24, 2002.

11. Duke Energy Hot Spring, LLC

[Docket No. ER02–694–000]

Take notice that on January 3, 2002, Duke Energy Hot Spring, LLC (Duke Hot Spring) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hot Spring seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Hot Spring also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Hot Spring seeks an effective date of March 1, 2002, the date on which Duke Hot Spring anticipates commencing the sale of test energy.

Comment Date: January 24, 2002.

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–841 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 8, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 2210–073.

c. *Date Filed*: December 13, 2001.

d. *Applicant*: Appalachian Power Company (APC).

e. *Name of Project*: Smith Mountain.

f. *Location*: The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a) 825(r) and 799 and 801.

h. *Applicant Contact*: Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside

Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.fed.us.*

j. *Deadline for filing comments and or motions*: (February 16, 2002).

All documents (original and eight copies) should be filed with: Mr. Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–073) on any comments or motions filed.

k. *Description of Request*: APC is requesting Commission approval to permit to Windstar Properties, L.L.C. (permittee) to install and operate within the project boundaries: (a) One stationary dock with thirty-four covered boat slips; (b) one stationary dock with nineteen covered boat slips; (c) a 10,000 square foot sand beach; and (d) associated shoreline protection facilities. The work would also include the dredging and disposal of approximately 200 cubic yards of lakebed material. The facilities would be located at the Land's End subdivision located along the Blackwater River portion of Smith Mountain Lake.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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.gov* under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–820 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, Conditions, and Prescriptions

January 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License 5 Megawatts or Less.

b. *Project No.:* P–2835–005.

c. *Date filed:* October 27, 2000.

d. *Applicant:* New York State Electric & Gas Corporation.

e. *Name of Project:* Rainbow Falls Hydroelectric Project.

f. *Location:* On the Ausable River, within the townships of Ausable and Chesterfield, in Clinton and Essex counties, New York. This project does not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mrs. Carol Howland, Project Environmental Specialist, New York State Electric & Gas Corporation, Corporate Drive—Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224, or call (607) 762–8881.

i. *FERC Contact:* Jarrad Kosa at (202) 219–2831 or via e-mail at *jarrad.kosa@ferc.fed.us.*

j. *Deadline for filing comments, recommendations, terms, conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms, conditions, and prescriptions 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing Rainbow Falls Hydroelectric Project consists of: (1) A 19-acre reservoir having a gross storage capacity of 234 acre-feet at 310 m.s.l.; (2) a 19-foot-high by 435-foot-long concrete gravity dam having (i) 3-foot-high flashboards and (ii) a concrete 345-foot-long spillway between the dam abutments with an average height of 16 feet and an average width of 21 feet; (3) a 77-foot-long by 22-foot to 49-foot-wide forebay intake structure, and (4) a 20-foot-long by 16-foot-wide sluiceway section containing a gate well located at the west end of the spillway section; (5) a 260-foot-long by 25.5-foot-deep concrete power canal leading to (6) a stone rack house containing trash racks and rakes; (7) two 6-foot-in-diameter steel riveted penstocks extending 401 feet and 411 feet, respectively, from the rack house to a (8) 67-foot-long by 40-foot-wide reinforced concrete powerhouse, housing two 1,320-kW generating units for a total installed capacity of 2,640-kW; (9) a 200-foot-long, 2.3-kV transmission line; and (10) appurtenant facilities. The project has an annual average generation of

13,991,000 kilowatt-hour (kWh). The purpose of the project is to produce electric power generation for distribution on the licensee's transmission and distribution facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–836 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2516–026]

Allegheny Energy Supply Company, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2516–026.

c. *Date Filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Shepherdstown, in Berkeley and Jefferson Counties, West Virginia. The project dam and reservoir are owned by the United States and operated by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803 or *peter.leitzke@ferc.fed.us*.

j. *Deadline for filing additional study requests:* February 15, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Dam No. 4 Hydro Station Project consists of: (1) a 200-foot-long, 80-foot-wide headrace; (2) a stone and concrete powerhouse containing three generating units with a total installed capacity of 1,900 kilowatts; (3) a 350-foot-long, 90-foot-wide tailrace; (4) a substation; (5) a 4.5-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,886 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *MARYLAND STATE HISTORIC PRESERVATION OFFICER* and the *WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER,* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

- Notice of application has been accepted for filing
- Notice of NEPA Scoping
- Notice of application is ready for environmental analysis
- Notice of the availability of the draft NEPA document
- Notice of the availability of the final NEPA document
- Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–837 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–100–000, RT01–77–000, and RT01–75–000]

Regional Transmission Organizations, Southern Company Services, Inc., Entergy Services, Inc., et al.; Notice of Meeting on SeTrans RTO

January 7, 2002.

The SeTrans Sponsors [1] have invited the Commission to participate in a meeting that will be held on January 14, 2002 from 1 p.m. to 5 p.m. and January 15, 2002, from 8:30 a.m. to 4 p.m. The meeting will be held at the Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337. The purpose of the meeting is to form a Stakeholder Advisory Committee to assist the development of the SeTrans RTO. Representatives of the Commission's staff will attend the meeting. Members of the public may attend. Further information about the meeting and a copy of the registration form is available at *www.setransgrid.com.*

During the course of the meeting, it is possible that discussions may overlap with issues pending in the above-captioned dockets. A summary of any such discussion will be placed in each of the listed dockets, if appropriate.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–839 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

[1] ''SeTrans Sponsors'' consists of Georgia Transmission Corporation, MEAG Power, Dalton Utilities, Entergy Corporation, South Mississippi Electric Power Association, City of Tallahassee, Jacksonville Electric Authority, South Carolina Public Service Authority, and Southern Companies.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–6]

Peer Review of EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction to Notice of Peer Review Workshop and public comment period.

SUMMARY: On January 2, 2002, the U.S. Environmental Protection Agency (EPA), Office of Research and Development (ORD) announced an external peer review workshop to review the revised draft document entitled, ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' (NCEA–1–0503) and a public comment period for this draft document (67 FR 75). The peer review workshop will take place on March 5 and 6, 2002, in Sacramento, California. The public comment period is January 9, 2002, to February 11, 2002. The deadline for registration is February 25, 2002. This notice corrects the address for electronic registration and electronic submission of comments provided in the January 2 **Federal Register** notice.

Correction to Addresses

To attend the meeting as an observer, please register with the Eastern Research Group (ERG), an EPA contractor. Please note that the registration Internet site provided in the January 2, 2002, **Federal Register** notice is incorrect. To register, send an e-mail request to ERG at *meetings@erg.com* (include name, affiliation, full address, phone/fax number, and e-mail address) or by calling the conference registration line at 781–674–7374 between the hours of 9 a.m. and 5 p.m. EST or via fax at 781–674–2906. You may also mail a registration request to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Please indicate when registering whether you plan to make observer comments.

Correction for Comment Submission

Please note that the e-mail address provided in the January 2, 2002, **Federal Register** notice is incorrect. Written comments should be submitted to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *meetings@erg.com.*

Dated: January 4, 2002.

Arthur Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–877 Filed 1–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–16]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fifteenth meeting of the Public Safety National Coordination Committee.

DATES: February 1, 2002 at 9:30 a.m.—12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov.* Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov.*

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fifteenth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: February 1, 2002.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Address: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Report from the Technology Subcommittee.
5. Report from the Implementation Subcommittee.
6. Public Discussion.
7. Other Business.
8. Upcoming Meeting Dates and Locations.
9. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively,

the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fifteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at *jalford@fcc.gov.* Please provide your name, the organization you represent, your phone number, fax number and E-mail address. This RSVP is for the purpose of determining the number of people who will attend this fifteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov.* The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://www.fcc.gov/wtb/publicsafety/ncc.html.*

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 02–785 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–82–C (Auction No. 82); DA 01–2882]

Auction No. 82 Construction Permits for New Analog Television Stations Scheduled for February 5, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the Construction Permits for New Analog Television Stations scheduled for February 5, 2002.

DATES: Auction No. 82 is scheduled for February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Linda Sanderson, Auctions Operations Branch at (717) 338–2888. Media Contact: Meribeth McCarrick at (202) 418–0654. Video Services Division: Shaun Maher at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 82 Procedures Public Notice* released on December 13, 2001. The complete text of the *Auction No. 82 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 82 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of construction permits for new analog television stations (''Auction No. 82''). On November 9, 2001, in accordance with the Balanced Budget Act of 1997, the Mass Media Bureau (''MMB'') and the Wireless Telecommunications Bureau (''WTB'') (collectively, the ''Bureaus'') released the *Auction No. 82 Comment Public Notice*, 66 FR 58735 (November 23, 2001). This document sought comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 82. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 82. The Bureaus received four comments and no reply comments in response to the *Auction No. 82 Comment Public Notice.*

i. Construction Permits To Be Auctioned

2. The construction permits available in Auction No. 82 include four new analog television stations. These construction permits are the subject of pending, mutually exclusive short-form applications (FCC Form 175) and participation in this auction is limited to the applicants identified in Attachment A of the *Auction No. 82 Comment Public Notice.* The minimum opening bids and upfront payments for these construction permits are also included on Attachment A of the *Auction No. 82 Comment Public Notice.*

B. Rules and Disclaimers

i. Relevant Authority

3. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction No. 82 Procedures Public Notice*, the *Auction No. 82 Comment Public Notice*, the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with part 1, subpart Q of the Commission's rules concerning competitive bidding proceedings.

4. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all

prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

ii. Prohibition of Collusion

5. Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits short-form applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For further details regarding the anti-collusion rule, refer to the *Auction Filing Window Public Notice*, 66 FR 33699 (June 25, 2001), released May 25, 2001. For Auction No. 82, this prohibition became effective at the short-form application deadline (June 29, 2001) and will end on the down payment due date after the auction (to be announced in a future public notice). Applicants certified compliance with § 1.2105(c) when they signed their short-form applications. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

6. Bidders in Auction No. 82 are encouraged not to use the same individual acting as an authorized bidder for any other applicant. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm).

7. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

8. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment E of the *Auction No. 82 Procedures Public Notice.*

iii. Due Diligence

9. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the television facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

10. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 82 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 82 are strongly encouraged to continue such research during the auction.

11. Potential bidders should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the *Class A Report and Order*, the winning bidders in Auction No. 82, upon submission of their long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television stations proposed in this auction. Information about the identity and location of Class A television stations is available from the Mass Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mmb*) and on the Mass Media Bureau's Class A television Web page: *http://www.fcc.gov/mmb/vsd/files/classa.html.*

12. Potential bidders are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

13. Bidders for the Columbia, South Carolina, station on Channel 47 should note that there is pending a petition for rulemaking to change the DTV channel for WCSC–TV, Charleston, South Carolina, from Channel 52 to Channel 47. Pending the outcome of the Channel 47 Charleston DTV rulemaking proceeding, bidders for Channel 47 at Columbia are advised that the construction permit for their facility will be conditioned on acceptance of interference from WCSC–DT, Channel 47, Charleston, South Carolina.

iv. Bidder Alerts

14. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary

forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

15. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 82 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

16. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act (NEPA) Requirements

17. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

18. Auction No. 82 will begin on Tuesday, February 5, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

19. Auction No. 82—New Analog Television

iii. Bidding Methodology

20. The bidding methodology for Auction No. 82 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

21. These are important dates relating to Auction No. 82:

Auction Seminar—January 8, 2002
Upfront Payments (via wire transfer)—January 14, 2002; 6:00 p.m. ET
Mock Auction—January 31, 2002
Auction Begins—February 5, 2002

v. Requirements for Participation

22. Those wishing to participate in the auction must:

- Be listed on Attachment A of the *Auction No. 82 Procedures Public Notice.*
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. EST, January 14, 2002.
- Comply with all provisions outlined in the *Auction No. 82 Procedures Public Notice.*

vi. General Contact Information

23. The following is a list of general contact information relating to Auction No. 82:

General Auction Information

General Auction Questions, Seminar Registration, FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. EST.

Auction Legal Information

Auction Rules, Policies, Regulations, Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information

Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues, Video Services Division, (202) 418–1600.

Technical Support

Electronic Filing, Automated Auction System, FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10 p.m. EST, Saturday, 8 a.m. to 7 p.m., Sunday, 12 noon to 6 p.m.

Payment Information

Wire Transfers, Refunds, FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding

Will be furnished only to qualified bidders.

FCC Copy Contractor

Additional Copies of Commission Documents, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (e-mail).

Press Information

Meribeth McCarrick (202) 418–0654.

FCC Forms

(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html.*

FCC Internet Sites

http://www.fcc.gov, *http://wireless.fcc.gov/auctions*, *http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

A. Maintaining Current Information in Short-Form Applications (FCC Form 175)

24. As noted in the *Auction No. 82 Comment Public Notice*, and under 47 CFR 1.65, applicants have an obligation to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in short-form applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the short-form application. Auction No. 82 applicants may file changes to their FCC Form 175 applications by electronic mail sent to the following address: *auction82@fcc.gov*. The Bureau prefers that any attachments be in a Word or pdf format. Documents filed by electronic mail must include a subject or caption referring to Auction No. 82. Filers must also submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

25. A separate copy of the letter should faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

26. In addition, applicants should make these changes to their FCC Form 175 applications on-line after release of the public notice explaining the status of the applications.

B. Electronic Review of Short ''Form Applications (FCC Form 175)

27. As noted in the *Auction Filing Window Public Notice*, applicants may review their own and other applicants' completed FCC Form 175s after the FCC has issued a public notice concerning the status of the applications. The FCC Form 175 electronic review system will be available at that time, and may be used to locate and print applicants' FCC Form 175 information. Applicants will also be able to view other applicants' completed FCC Form 175 applications. There is no fee for accessing this system. Instructions for electronic review of FCC Form 175 applications will be discussed in a future public notice.

C. Installment Payments

28. Installment payment plans will not be available in Auction No. 82.

III. Pre-Auction Procedures

A. Application Processing and Minor Corrections

29. Before the auction seminar, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

30. As described more fully in the Commission's rules, after the short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

B. Auction Seminar

31. On January 8, 2002, the FCC will sponsor a free seminar for Auction No. 82 at the Federal Communications Commission, located at 445 12th Street, SW. (Room 3–B516), Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the broadcast service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

32. To register, complete Attachment B of the *Auction No. 82 Procedures Public Notice* and submit it by Friday, January 4, 2002. Registrations are accepted on a first-come, first-served basis.

Upfront Payments—Due January 14, 2002

33. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After the FCC Form 175 becomes available electronically, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. EST on January 14, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 82 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the January 14, 2002 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

34. Wire transfer payments must be received by 6 p.m. EST on January 14, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.

Receiving Bank: Mellon Pittsburgh.

BNF: FCC/Account # 910–0180.

OBI Field: (Skip one space between each information item).

''AUCTIONPAY''.

TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 12).

PAYMENT TYPE CODE (same as FCC Form 159, Block 24A; A82U).

FCC CODE 1 (same as FCC Form 159, block 28A: ''82'').

PAYER NAME (same as FCC Form 159, block 2).

LOCKBOX NO. # 358420.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

35. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 82.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

36. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction No. 82 Procedures Public Notice.* An electronic version of the FCC Form 159 will be accessible after the FCC Form 175 becomes available

electronically. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

37. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), the Commission ordered that ''former defaulters,'' i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.''

38. In the *Auction No. 82 Comment Public Notice*, we proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a construction permit, otherwise qualified bidders who applied for that construction permit on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time.

39. WyoMedia contends that the upfront payment for Scottsbluff, Nebraska should be reduced to between $41,000 and $46,000. WyoMedia provides community of license information for each permit in the auction and contends that parties interested in the Scottsbluff permit would be paying an upfront payment that is three times as much for other permits. WyoMedia urges the Bureaus to adopt an upfront payment that is consistent with those set for other permits. Based upon the information WyoMedia provides, we conclude that the upfront payment for Scottsbluff, Nebraska should be reduced to $50,000.

40. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 82 Procedures Public Notice.*

41. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

42. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, in conjunction with the selections made on the FCC Form 175.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

43. The Commission will use wire transfers for all Auction No. 82 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically after the FCC Form 175 becomes available for review. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by January 14, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank.
ABA Number.
Contact and Phone Number.
Account Number to Credit.
Name of Account Holder.
Taxpayer Identification Number (see below).
Correspondent Bank (if applicable).
ABA Number.
Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D.

C. Auction Registration

44. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

45. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

46. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Tuesday, January 29, 2002, should contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

47. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

D. Electronic Bidding

48. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, i.e., over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have

its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 82. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—can be specified on the FCC Form 175 during the resubmit window.

49. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

E. Mock Auction

50. All qualified bidders will be eligible to participate in a mock auction on Thursday, January 31, 2002. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

51. The first round of bidding for Auction No. 82 will begin on Tuesday, February 5, 2002. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

52. In the *Auction No. 82 Comment Public Notice*, we proposed to award all construction permits in a single, simultaneous multiple round auction. We received no comments on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the new analog television station construction permits through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on the construction permits in each round of the auction.

ii. Maximum Eligibility and Activity Rules

53. In the *Auction No. 82 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

54. For Auction No. 82, we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given construction permit.

55. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. A bidder is required to be active on 100 percent of their bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility.

iii. Activity Rule Waivers and Reducing Eligibility

56. In the *Auction No. 82 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers that may be used in any round during the course of the auction. We received no comments on this issue.

57. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

58. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating them from the auction.

59. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules (*see* Part IV.A.ii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

60. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open. Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

61. For Auction No. 82, the Bureaus proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when

one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all construction permits.

62. The Bureaus also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

63. The Bureaus further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if any remain).

64. In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the construction permits.

65. We received no comments on the subject, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 82 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 82, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

66. In the *Auction No. 82 Comment Public Notice,* we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

67. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

68. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the qualified bidders public notice referenced.

69. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

70. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.,* because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.

71. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of construction permits.

72. In the *Auction No. 82 Comment Public Notice,* the Bureaus proposed to establish minimum opening bids for Auction No. 82 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 82, the Bureaus proposed calculating the minimum opening bid based on the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. Three commenters challenged the minimum opening bids proposed for this auction. WyoMedia Corp. challenged the minimum opening bid for Scottsbluff,

Nebraska, asking that it be reduced to between $41,000 and $46,000. WyoMedia contends that those parties interested in the Scottsbluff permit would be paying a minimum opening bid that is three times as much for other permits. WyoMedia urges the Bureaus to adopt a minimum opening bid that is consistent with those set for other permit. Hubbard contends that $250,000 is a more reasonable value for the minimum opening bid for Pittsfied, Massachusetts. Powell Meredith requests that all, of the minimum opening bids be reduced since the costs of constructing new television stations have increased. We agree that minimum opening bids for Scottsbluff, Nebraska should be reduced to $50,000. However, we do not find that the commenters have justified reducing the minimum opening bids for other permits. Therefore only the minimum opening bids for Scottsbluff, Nebraska will be reduced.

iii. Bid Increments and Minimum Accepted Bids

73. In the *Auction No. 82 Comment Public Notice,* we proposed to use a smoothing methodology to calculate minimum acceptable bids. We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. We received no comment on this issue. We adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given construction permit between a maximum and minimum value based on the bidding activity on that construction permit. This methodology allows the increments to be tailored to the activity level of a construction permit, decreasing the time it takes for active construction permits to reach their final value. The formula used to calculate this increment is included as Attachment D of the *Auction No. 82 Procedures Public Notice.*

74. We adopt our proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureaus retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureaus will do so by announcement in the Automated Auction System. Under its discretion, the Bureaus may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureaus may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureaus also retains the discretion to use alternate methodologies, such as a flat percentage increment for all construction permits, for Auction No. 82 if circumstances warrant.

iv. High Bids

75. At the end of each round, the Automated Auction System determines the standing high bid for each construction permit based on the gross dollar amounts of the bids received for each construction permit.

76. In the case of tied high bids, a pseudo-random generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

77. During a bidding round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round.

78. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 82.

79. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

80. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

81. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

82. Once there is a standing high bid on a construction permit, the Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the *bid increment.* The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

83. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts for construction permits that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

vi. Bid Removal and Bid Withdrawal

84. In the *Auction No. 82 Comment Public Notice,* we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The one round in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comments on this issue.

85. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid''

function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.,* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we adopt these procedures for Auction No. 82.

86. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

87. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.,* reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 82, adoption of a limit on their use to one round is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in this auction.

88. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in this round. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a permit. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a ''place holder'' on the construction permit until a new acceptable bid is submitted on that construction permit

89. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

90. In the *Part 1 Fifth Report and Order,* the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

91. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 82 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

92. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

viii. Maintaining the Accuracy of Short-Form (FCC Form 175) Information

93. As noted in Part II.A., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

94. A separate copy of the letter should be faxed to Kenneth Burnley, Auctions and Industry Analysis Division, (202) 418–2923. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

I. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

95. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, down payments and any withdrawn payments due.

96. Within ten business days after release of the auction closing notice, each winning bidder must submit

sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credit). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

97. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each construction permit won through Auction No. 82. Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to the auction winners at the close of the auction.

C. Default and Disqualification

98. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

99. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 82 may be entitled to a refund of their upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

100. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Michelle Bennett, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

101. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Leora Hochstein,

Deputy Chief, Legal Branch, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–872 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting, Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 4:03 p.m. on Wednesday, January 9, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), and concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: January 10, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–1019 Filed 1–10–02; 3:26 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; Amendment No. 3 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 declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001: Holmes and Sharkey Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression

Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–804 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011742–001.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd/Zim Mediterranean Space Charter Agreement.

Parties: Farrell Lines, Inc. Hapag-Lloyd Container Linie GmbH. P&O Nedlloyd Limited. P&O Nedlloyd B.V. Zim Israel Navigation Co., Ltd.

Synopsis: The proposed agreement modification adds authority for the parties to discuss and agree on the phasing-in and phasing-out of vessels for maintenance and to discuss and agree on criteria to measure adherence to any agreed-upon schedule, as well as any remedial action in the event of non-adherence. The modification also clarifies the parties' authority to use common terminals and adds provisions dealing with force majeure situations, notices, and enforceability. The parties request expedited review.

Dated: January 9, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–845 Filed 1–11–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Edward T. Christian, trustee of Edward T. Christian Revocable Trust, Albert Lea, Minnesota; to acquire voting shares of Kiester Investments, Inc., Kiester, Minnesota, and thereby indirectly acquire voting shares of First National Bank of Kiester, Kiester, Minnesota.

Board of Governors of the Federal Reserve System, January 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–795 Filed 1–11–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0402]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement (OMB Control No. 0910–0378)—Extension

The third-party program under the United States/European (U.S./EC) Community/Mutual Recognition Agreement (MRA) is intended to implement that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices. Under the MRA, firms may apply to become designated as a U.S. Conformity Assessment Body (CAB). Firms who are designated will be qualified to conduct quality system evaluations for all classes of devices and product type examinations and verifications for selected devices based on EC requirements under the voluntary third-party program authorized by MRA. Firms designated as European Union (EU) CABs could conduct quality system evaluations for all classes of devices and premarket 510(k) evaluations for selected devices based on FDA requirements. Under the voluntary third-party program, reports of these evaluations would be submitted by the EU CABs to FDA. The EU CABs would also be required to maintain copies of their evaluation reports.

FDA requests approval of the following collection of information:

Requests for Designation as U.S. CABs—Under this program, U.S. companies were allowed to apply for designation as a U.S. CAB. Such designation enabled the company to perform third-party reviews of U.S. products for export to the EU and third-party audits of quality systems established by manufacturers of medical devices manufactured for export to the EU. Third-party review of U.S. products

for export and third-party audit of quality systems was elective and at the discretion of the manufacturer of the product. At the present time, only eight U.S. CABs are active. The agency is not accepting applications for U.S. CAB designation at this time and in the foreseeable future.

Premarket Reports by EU CABs—Under this program, EU CABs will be able to perform third-party evaluations for certain products manufactured in Europe for export to the United States. Third-party evaluation is elective and at the discretion of the manufacturer of the product.

Quality System Reports by EU CABs—Under this program, EU CABs will be able to perform third-party audits of the quality systems established by EU manufacturers of products manufactured for export to the United States. Third-party audit of quality systems is elective and at the discretion of the manufacturer of the product.

EU CABs must maintain records of their third-party evaluations of quality systems and premarket submissions for certain products manufactured for export to the United States for a period of no less than 3 years.

The program implements that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

In the **Federal Register** of October 5, 2001 (66 FR 51050), the agency requested comments on the proposed collection of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of Respondents	Annual Frequency perResponse	Total Annual Responses	Hours per Response	Total Hours
Premarket Reports by EC CABs	11	5	55	40	2,200
Quality System Reports by EC Cabs	11	15	165	32	5,280
Total					7,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Item	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Premarket Reports by EC CABs	11	5	55	10	550
Quality System Reports by EC Cabs	11	15	165	10	1,650
Total					2,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The following is an explanation of the burden estimate.

I. Reporting Burden

A. Requests for Designation as U.S. CAB

U.S. firms who have applied and have been accepted for designation as a U.S. CAB will be able to perform third-party evaluations of U.S. products for export to the EU. Likewise, European firms who have applied and been designated as EC CABs, will be able to perform third- party reviews of products to be exported to the United States. The application for nomination as an EU CAB does not represent a paperwork burden subject to the PRA because the designation procedure is an internal process that is required by, and administered by, European authorities. Only the application for designation as a U.S. CAB represents a paperwork burden under the PRA. However, the agency has received 10 applications for designation as U.S. CABs, 8 of whom are still active. The agency is not accepting any applications at this time, and does .not anticipate accepting any applications in the near future. Thus burden for U.S. CAB designation is nonexistent at this time.

B. Premarket Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party review for approximately 55 to 100 medical device products annually. The agency expects that interest and participation in the program will increase with time. The agency further estimates based on dialogue with EC officials, that 11 firms will be designated to act as EC CABs.

C. Quality System Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party audits for approximately 165 medical device products annually. The agency estimates that 11 EU CABs will perform these evaluations.

II. Recordkeeping

FDA requires the reviewers to keep in their records a copy of the report that they submit to FDA for each review. The agency anticipates that 55 premarket reports and 165 quality system reports will be generated and required to be maintained by EU CABs annually. The agency further estimates that each reviewer will require no more than 10 hours (2 hours per recordkeeping per report) for each to maintain such records annually.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–854 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0437]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Use—21 CFR Part 511 (OMB Control No. 0910–0017)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act) for approval of new animal drugs. Section 512(j) of the act (21 U.S.C. 360b(j)) authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). A sponsor must submit to FDA a notice of claimed investigational exemption (INAD) before shipping the new animal drug for clinical tests in animals. The INAD must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. The regulations in part 511 also require that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that distribution is controlled to prevent potential abuse. The agency utilizes these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are the persons who use new animal drugs investigationally.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	6	1,147	8	9,176
511.1(b)(5)	190	1.5	287	140	40,180
511.1(b)(6)	190	.005	1	250	250
511.1(b)(8)(ii)	190	.005	1	20	20
511.1(b)(9)	190	.16	30	8	240
Total					49,866

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record-keeper	Total Hours
511.1(a)(3)	190	7.5	1,434	9	12,906
511.1 (b)(3)	190	10	1,912	1	1,912
511.1(b)(7)(ii)	190	2	956	3.5	3,346
511.1(b)(8)(i)	190	4	956	3.5	3,346
Total					21,510

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e., the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–855 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0309, 01M–0342, 01M–0329, 01M–0381, 01M–0371, 01M–0412, 01M–0305, 01M–0337, 01M–0296, 01M–0310, 01M–0306, 01M–0307, 01M–0360, 01M–0380, 01M–0373, 01M–0392, 01M–0413, 01M–0414, 01M–0439]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on the Internet at http://www.fda.gov; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2001, through September 30, 2001, in accordance with the procedure explained previously. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2001, THROUGH SEPTEMBER 30, 2001

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P970056/01M–0309	Bausch & Lomb Surgical	KERACOR 116 Ophthalmic Excimer Laser System	September 28, 1999
P980044/01M–0342	Quintiles, Inc.	SUPARTZ Dispo	January 24, 2001
P000016/01M–0329	GE Medical Systems Information Technologies	Corometrics Model 120 F-Series Maternal/Fetal Monitor with Integrated Fetal Oxygen Saturation Monitoring, Corometrics Fetal Patient Module, and the Nellcor OXIFIRST FS14 Sensor	February 9, 2001
P000007/01M–0381	Edwards Lifesciences, LLC	EDWARDS PRIMA Plus Bioprosthesis Model 2500P	February 27, 2001
P990026/01M–0371	Cygnus, Inc.	GLUCOWATCH Automatic Glucose Biographer	March 22, 2001
P000032/01M–0412	CryoGen, Inc.	HEROPTION UTERINE CRYOBLATION THERAPY System	April 20, 2001
P930016(S12)/01M–0305	VISX, Inc.	STAR Excimer Laser System Models S2 and S3	April 27, 2001
P000005/01M–0337	MediTeam AB	CARISOLV Non-Invasive Dental Caries Removal System	June 27, 2001
P000043/01M–0296	TherMatrx, Inc.	TMx2000 BPH Thermotherapy System	June 29, 2001
P000021/01M–0310	Dade Behring, Inc.	DIMENSION RxL PSA Reagent Cartridge	July 5, 2001
P000041/01M–0306	Deus Technologies, LLC	RAPIDSCREEN RS–2000	July 12, 2001
P000026/01M–0307	STAAR Surgical Co.	AQUAFLOW Collegen Glaucoma Drainage Device, Model CGDD–20	July 12, 2001
P000055/01M–0360	Diagnostic Medical Systems	UBIS 5000	July 17, 2001
P830039(S7)/01M–0380	Medical CV, Inc.	OMNICARBON Cardiac Valve Prosthesis	July 26, 2001
P010015/01M–0373	Medtronic, Inc.	INSYNC Biventricular Pacing System including INSYNC Model 8040 Pulse Generator, ATTAIN LV Model 2187 and ATTAIN CS Model 2188 Leads	August 28, 2001
H010001/01M–0392	Avanta Orthopaedics, Inc.	Avanta Metacarpophalangeal (MCP) Joint Implant Finger Prosthesis	August 28, 2001
P010016/01M–0413	Ortec International, Inc.	ORCEL (Bilayered Cellular Matrix)	August 31, 2001

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2001, THROUGH SEPTEMBER 30, 2001—Continued

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P010023/01M–0414	SOUNDTEC, Inc.	SOUNDTEC Direct System	September 7, 2001
P000029/01M–0439	Q-Med AB	DEFLUX Injectable Gel	September 24, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 31, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–853 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0545]

''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax'' dated October 2001. The guidance document provides the current recommendations for assessment of donor suitability and product safety for donors potentially exposed to anthrax. The guidance document applies to Whole Blood, blood components (including recovered plasma) and Source Plasma collections intended for use in transfusion or for further manufacturing into injectable products.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax'' dated October 2001. The guidance document provides the current recommendations for assessment of donor suitability and product safety for donors potentially exposed to *Bacillus anthracis*, the agent of anthrax. The guidance document applies to Whole Blood, blood components (including recovered plasma) and Source Plasma collections intended for use in transfusion or for further manufacturing into injectable products. FDA developed the recommendations in the guidance document in consultation with other Public Health Service agencies and with the Blood Safety Committee of the Department of Health and Human Services. Recommendations addressed in the guidance include: Donor deferral, product quarantine and retrieval, and notification of prior transfusion recipients.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on recommendations for assessment of donor suitability and product safety for donors potentially exposed to anthrax. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, but is implementing this guidance document immediately because of public health concerns. Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–791 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA will recognize for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 006'' (Recognition List Number: 006) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written comments concerning this document at any time. See section VI of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of ''Modification to the List of Recognized Standards, Recognition List Number: 006'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the contact person (address below). Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed on FDA's Internet site at http://www.fda.gov/cdrh/fedregin.html. See section V of this document for electronic access to the searchable data base for the current list of ''FDA Recognized Consensus Standards,'' including Recognition List Number: 006 modifications, and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 156.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** ofFebruary 25, 1998 (63 FR 9561), FDA announced the availability of guidance entitled ''Recognition and Use of Consensus Standards.'' This notice described how FDA will implement its standards program recognizing the use of certain standards and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617); July 12, 1999 (64 FR 37546); November 15, 2000 (65 FR 69022); and May 7, 2001 (66 FR 23032), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. When these notices were published, the agency maintained ''html'' and ''pdf'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions were publicly accessible at the agency's Internet site. The agency maintains the current list in a searchable data base accessible to the public. See section V of this document for electronic access information.

II. Discussion of Modifications to the List of Recognized Standards, Recognition List Number: 006

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews for devices. FDA will incorporate these modifications in the list of ''FDA Recognized Consensus Standards'' in the agency's searchable data base. FDA will use the term ''Recognition List Number: 006'' to identify: (1) Supplementary information sheets for standards added to the list for the first time, (2) standards added to replace withdrawn standards, (3) still recognized standards for which minor revisions are made to clarify the application of the standards, and (4) standards withdrawn with no replacement.

At the end of this notice, FDA lists modifications the agency is making that involve: (1) The initial addition of standards not previously recognized by FDA and (2) the addition of standards in conjunction with the withdrawal of other standards that are replaced by these later, amended, or different standards.

In this section, FDA describes: (1) Modifications that involve the withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the addition of certain recognized standards with revisions to the supplementary information sheets involving changes in significant applications of the standards.

A. Anesthesia

1. In the supplementary information sheet for IEC 60601–3–1:1996–08, identified under previous item 11, a minor change is made to the contact person. This standard remains recognized and identified under current item 11.
2. In the supplementary information sheet for ASTM F1456–92, identified under previous item 24, a minor change is made to the contact person. This standard remains recognized and identified under current item 24.
3. In the supplementary information sheet for ASTM F1462–93, identified under previous item 25, a minor change is made to the contact person. This standard remains recognized and identified under current item 25.
4. In the supplementary information sheet for ISO 7767:1997, identified under previous item 32, a minor change is made to the contact person. This standard remains recognized and identified under current item 32.
5. In the supplementary information sheet for ISO 9918:1993, identified under previous item 33, a minor change is made to the contact person. This standard remains recognized and identified under current item 33.

B. Biocompatibility

1. ASTM F1904–98 is withdrawn under previous item 44. ASTM F1904–98e1 is added under current item 52.
2. ASTM E1372–95 is withdrawn under previous item 33. ASTM E1372–95 (1999) is added under current item 53.
3. ISO/AAMI/ANSI 10993–5:1998 is withdrawn under previous item 29. ANSI/AAMI/ISO 10993–5:1999 is added under current item 54.
4. ISO/AAMI/ANSI 10993–6:1995 is withdrawn under previous item 18. ANSI/AAMI/ISO 10993–6:1994 is added under current item 55.

C. Cardiovascular/Neurology

1. ASTM F138–97 is withdrawn under previous item 9. ASTM F138–00 is added under current item 34.
2. ASTM F562–95 is withdrawn under previous item 11. ASTM F562–00 is added under current item 35.
3. ASTM F136–98 is withdrawn under previous item 23. ASTM F136–98e1 is added under current item 36.
4. IEC 60601–2–23:1993 is withdrawn under previous item 26. IEC 60601–2–

23 (1999–12) is added under current item 37.

5. IEC 60601–2–34 (1994–12) is withdrawn under previous item 27. IEC 60601–2–34 (2000–10) is added under current item 38.

6. ASTM F647–94 is withdrawn under previous item 31. ASTM F647–94 (2000) is added under current item 39.

D. Dental/ENT

1. In the supplementary information sheet for ISO 7494:1996, identified under previous item 74, a minor change is made to the contact person. This standard remains recognized and identified under current item 74.

2. In the supplementary information sheet for ISO 7785–1:1997, part 1, identified under previous item 75, a minor change is made to the contact person. This standard remains recognized and identified under current item 75.

3. In the supplementary information sheet for ISO 7785–2:1995, part 2, identified under previous item 76, a minor change is made to the contact person. This standard remains recognized and identified under current item 76.

4. In the supplementary information sheet for ISO 9168:1991, identified under previous item 78, a minor change is made to the contact person. This standard remains recognized and identified under current item 78.

5. In the supplementary information sheet for ISO 13294:1997, identified under previous item 84, a minor change is made to the contact person. This standard remains recognized and identified under current item 84.

E. General

1. IEC 60601–1–1:1992–06 amendment 1, 1995–11 is withdrawn under previous item 5. IEC 60601–1–1:2000 is added under current item 27.

2. IEC 60601–1–2, First Edition 1993–04, is withdrawn under previous item 6. IEC 60601–1–2, Second Edition 2001, is added under current item 28.

3. ASTM D–4169/1993 is withdrawn under previous item 17. ASTM D–4169:1999 was recognized by ''Sterility'' in the November 15, 2001, recognition list 004.

F. General Hospital/General Plastic Surgery

1. In the supplementary information sheet for IEC 60601–2–21, identified under previous item 09, a minor change is made to the contact person. This standard remains recognized and identified under current item 09.

2. In the supplementary information sheet for IEC 60601–2–38, identified under previous item 10, a minor change is made to the contact person. This standard remains recognized and identified under current item 10.

3. In the supplementary information sheet for IEC 60601–2–19/1996–10, identified under previous item 29, the a minor change is made to contact person. This standard remains recognized and identified under current item 29.

4. In the supplementary information sheet for IEC 60601–2–20/1996–10, identified under previous item 32, the a minor change is made to contact person. This standard remains recognized and identified under current item 32.

5. ISO 8536–4, First Edition 1987–11–01, is withdrawn under previous item 17. ISO 8536–4, Second Edition 1998–02–15, is added under current item 75.

6. ISO 1135–4, First Edition 1987–12–01, is withdrawn under previous item 19. ISO 1135–4, Second Edition 1998–03–15, is added under current item 76.

7. ASTM F1862–98 is withdrawn under previous item 36. ASTM F1862–00a is added under current item 77.

8. ASTM F1670–97 is withdrawn under previous item 39. ASTM F1670–98 is added under current item 78.

9. ISO 594/2, First Edition 1991–05–01, is withdrawn under previous item 12. ISO 594–2:1998 is added under current item 79.

10. ASTM E1112–86 (reapproved 1991) is withdrawn under previous item 02. ASTM E1112–00 (reapproved 1991) is added under current item 80.

G. ObGyn/Gastroenterology

1. ASTM F1518–94 is withdrawn under previous item 22. ASTM F1518–00 is added under current item 23.

2. ASTM F623–89 is withdrawn under previous item 3. ASTM F623–99 is added under current item 24.

3. AAMI HF18–93 is withdrawn under previous item 18. ANSI/AAMI HF18–2001 is added under current item 25.

H. Orthopaedic

1. ASTM F67–95 is withdrawn under previous item 1. ASTM F67–00 is added under current item 123.

2. ASTM F86–91 is withdrawn under previous item 3. ASTM F86–01 is added under current item 124.

3. ASTM F139–96 is withdrawn under previous item 7. ASTM F139–00 is added under current item 125.

4. ASTM F366–82 (R1993) is withdrawn under previous item 8. ASTM F366–82 (2000) is added under current item 126.

5. ASTM F562–95 is withdrawn under previous item 11. ASTM F562–00 is added under current item 127.

6. ASTM F604–94 is withdrawn under previous item 15 with no replacement. ASTM discontinued it in 2001.

7. ASTM F688–95 is withdrawn under previous item 20. ASTM F688–00 is added under current item 128.

8. ASTM F745–95 is withdrawn under previous item 21. ASTM F745–00 is added under current item 129.

9. ASTM F799–96 is withdrawn under previous item 25. ASTM F799–99 is added under current item 130.

10. ASTM F1044–95 is withdrawn under previous item 30. ASTM F1044–99 is added under current item 131.

11. ASTM F1088–87 (1992) is withdrawn under previous item 31. ASTM F1088–87 (1992) e1 is added under current item 132.

12. ASTM F1108–97 is withdrawn under previous item 34. ASTM F1108–97a is added under current item 133.

13. ASTM F1295–97 is withdrawn under previous item 39. ASTM F1295–97a is added under current item 134.

14. ASTM F1341–92 is withdrawn under previous item 41. ASTM F1341–99 is added under current item 135.

15. ASTM F1472–93 is withdrawn under previous item 44. ASTM F1472–00 is added under current item 136.

16. ASTM F1501–95 is withdrawn under previous item 45. ASTM discontinued it in 2000. It was replaced with ASTM F1147–99 item 107.

17. ASTM F1537–94 is withdrawn under previous item 46. ASTM F1537–00 is added under current item 137.

18. ASTM F1541–94 is withdrawn under previous item 47. ASTM F1541–00 is added under current 138.

19. ASTM F1580–95 is withdrawn under previous item 48. ASTM F1580–95e1 is added under current item 139.

20. ASTM F1582–95 is withdrawn under previous item 49. ASTM F1582–98 is added under current item 140.

21. ASTM F1612–95 is withdrawn under previous item 52. ASTM F1612–95 (2000) is added under current item 141.

22. ASTM F1658–95 is withdrawn under previous item 53. ASTM discontinued it in 2000. It was replaced with ASTM F1044–99, item 131.

23. ASTM F1672–95e1 is withdrawn under previous item 55. ASTM F1672–95 (2000) is added under current item 142.

24. ISO 7153–1:1991 is withdrawn under previous item 77. ISO 7153–1:1991/amended 1:1999 is added under current item 143.

25. ASTM F138–97 is withdrawn under previous item 89. ASTM F138–00 is added under current item 144.

26. ASTM F565–85 (1996) e1 is withdrawn under previous item 92. ASTM F565–00 is added under current item 145.

27. ASTM F603–83 (1995) is withdrawn under previous item 94. ASTM F603–00 is added under current item 146.

28. ASTM F1539–95 is withdrawn under previous item 95. ASTM discontinued it in 2000. It was replaced with ASTM F564–00, item 156.

29. ASTM F620–97 is withdrawn under previous item 96. ASTM F620–00 is added under current item 147.

30. ASTM F648–98 is withdrawn under previous item 99. ASTM F648–00 is added under current item 148.

31. ASTM F746–87 (1994) is withdrawn under previous item 100. ASTM F746–87 (1999) is added under current item 149.

32. ASTM F983–86 (1996) is withdrawn under previous item 102. ASTM F983–86 (2000) is added under current item 150.

33. ASTM F1540–95 is withdrawn under previous item 103. ASTM discontinued it in 2000. It was replaced with ASTM F564–00, item 156.

34. ASTM F1091–91 (1996) is withdrawn under previous item 105. ASTM F1091–91 (2000) is added under current item 151.

35. ASTM F1691–96 is withdrawn under previous item 106. ASTM discontinued it in 2001. It was replaced with ASTM F543–01, item 157.

36. ASTM F1160–98 is withdrawn under previous item 108. ASTM F1160–00 is added under current item 152.

37. ASTM F1264–99 is withdrawn under previous item 110. ASTM F1264–00 is added under current item 153.

38. ASTM F1350–91 (1996) is withdrawn previous item 112. ASTM F1350–91 (2001) is added under current item 154.

39. ISO 7207–2:1994 is withdrawn under previous item 122. ISO 7207–2:1998 is added under current item 155.

I. Physical Medicine

1. ISO 7176–1:1986 is withdrawn under previous item 16. ISO 7176–1:1999 is added under current item 158.

2. ISO 7176–2:1990 is withdrawn under previous item 17. ISO 7176–2:2001 is added under current item 159.

3. ANSI/RESNA WC/Vol. 2–1998, section 21: Requirements and Test Methods for Electromagnetic Compatibility—new item #160.

J. Radiology

1. AIUM—1994 is withdrawn under previous item 4. AIUM—Medical Ultrasound Safety (R1999) is added under current item 66.

2. In the supplementary information sheet for IEC 60806, identified under previous item 6, the title has been changed. This standard remains recognized and identified under current item 6.

3. NEMA MS–1–1988 is withdrawn under previous item 10. NEMA MS–1–1998 (R2000) is added under current item 67.

4. NEMA MS–4–1989 is withdrawn under previous item 13. NEMA MS–4 (R1998) is added under current item 68.

5. NEMA MS6–2000 is withdrawn under previous item 15. NEMA MS6–2000 is added under current item 69.

6. NEMA PS3 (set), DICOM Set is withdrawn under previous item 19. NEMA PS3 (set), DICOM Set is added under current item 70.

7. NEMA UD 2–2998, revision 2 is withdrawn under previous item 20. NEMA UD 2–1998 revision 2 is added under current item 71.

8. NEMA UD 3–1998, revision 1 is withdrawn under previous item 21. NEMA UD 3–1998 revision 1 is added under current item 72.

9. In the supplementary information sheet(s) for IEC 60601–2–19, identified under previous item 36, the date has been changed. This standard remains recognized and identified under current item 36.

10. In the supplementary information sheet(s) for AIUM–AOMS, identified under previous item 44, the title has been changed. This standard remains recognized and identified under current item 44.

11. In the supplementary information sheet(s) for IEC 61303, identified under previous item 49, a minor change is made to the Standard Development Organization. This standard remains recognized and identified under current item 49.

12. In the supplementary information sheet(s) for IEC 61145, identified under previous item 51, the name of the Standards Development Organization has been changed. This standard remains recognized and identified under current item 51.

13. In the supplementary information sheet(s) for UL–544, identified under previous item 52, the date has been changed. This standard remains recognized and identified under current item 52.

14. UL–122 is withdrawn under previous item 61. UL–122 (2001) is added under current item 73.

15. NEMA MS–7–1998 is withdrawn under previous item 16. NEMA MS–7–1998 is added under current item 74.

K. Sterility

1. AAMI/ANSI ST34:1991 is withdrawn under previous item 15. ANSI/AAMI/ISO 14161:2000 is added under current item 70.

2. In the supplementary information sheet for ANSI/AAMI ST24:1999, identified under previous item 38, the title and the contact person have been changed. This standard remains recognized and identified under current item 38.

3. In the supplementary information sheet for ANSI/AAMI ST37:1996, identified under previous item 47, the title and the contact person have been changed. This standard remains recognized and identified under current item 47.

4. In the supplementary information sheet for ANSI/AAMI ST41:1999, identified under previous item 49, the title and the contact person have been changed. This standard remains recognized and identified under current item 49.

III. List of Recognized Standards

FDA maintains the agency's current list of ''FDA Recognized Consensus Standards'' in a searchable data base that may be accessed directly at FDA's Internet site at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm. FDA will incorporate the modifications and minor revisions described in this notice into the data base and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective.

FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive ''Guidance on the Recognition and Use of Consensus Standards'' via your fax machine, call the CDRH Facts-On-Demand system at

800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of ''Guidance onthe Recognition and Use of Consensus Standards'' may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing ''Modifications to the List of Recognized Standards, Recognition List Number: 006'' will be available on the CDRH home page. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable data base for ''FDA Recognized Consensus Standards,'' may be accessed through hyper links at http://www.fda.gov/cdrh/stdsprog.html. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at http://www.fda.gov/cdrh/fedregin.html.

VI. Submission of Comments and Effective Date

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current listing of ''Modifications to the List of Recognized Standards, Recognition list: 006.''

The recognition of standards announced in this notice of modifications will become effective on January 14, 2002.

VII. Listing of New Entries

The listing of new entries and consensus standards added as ''Modifications to the List of Recognized Standards,'' under Recognition List Number: 006, is as follows:

Item Number	Title of Standards	Reference Number and Date
	Biocompatibility	
52	Standard Practice for Testing for Biological Responses to Particles In Vivo	ASTM F1904–98e1
53	Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	ASTM E1372–95 (1999)
54	Biological Evaluation of Medical Devices—Part 5: Tests for Cytotoxicity: In Vitro Methods	ANSI/AAMI/ISO 10993–5:1999
55	Biological Evaluation of Medical Device—Part 6: Test for Local Effects After Implantation	ANSI/AAMI/ISO 10993–6:1994
	Cardiovascular/Neurology	
34	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants	ASTM F138–00
35	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications	ASTM F562–00
36	Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstital) Alloy (UNS R56401) for Surgical Implant Applications	ASTM F136–98e1
37	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Transcutaneous Partial Pressure Monitoring Equipment	IEC 60601–2–23 (1999–12)
38	Medical Electrical Equipment-Part 2: Partial Requirements for the Safety of Direct Blood Pressure Monitoring Equipment	IEC 60601–2–34 (2000–10)
39	Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Application	ASTM F647–94 (2000)
40	Nonautomated Sphygmomanometers	ANSI/AAMI SP9:1994
41	Diagnostic Electrocardiographic Devices	ANSI/AAMI EC11:1991
42	Cardiac Monitors, Heart Rate Meters, and Alarms	ANSI/AAMI EC13:1992
43	Ambulatory Electrocardiographs	ANSI/AAMI EC38:1998
44	Blood Pressure Transducers	ANSI/AAMI BP22:1994
	General	
27	Medical Electrical Equipment—Part 1: General Requirements for Safety; Safety Requirements for Medical Electrical Systems	IEC 60601–1–1:2000
28	Medical Electrical Equipment—Part 1: General Requirements for Safety; Electromagnetic Compatibility—Requirements and Tests	IEC 60601–1–2, Second Edition, 2001
29	Human Factors Design Process for Medical Devices	ANSI/AAMI HE74–2001
	General Hospital/ General Plastic Surgery	
62	Infusion Equipment for Medical Use—Part 6: Freeze Drying Closures for Infusion Bottles	ISO 8536–6, First Edition, 1996–04–01
63	Infusion Equipment, Caps Made of Aluminum-Plastic Combinations for Infusion Bottles	ISO 8536-7, Second Edition, 1999-09-01
64	Infusion Equipment for Medical Use—Part 3: Aluminum Caps for Infusion Bottles	ISO 8536–3, Second Edition, 1999–09–01
65	Infusion Equipment for Medical Use—Part 2: Closures for Infusion Bottles	ISO 8536–2, First Edition, 1992–09–15
66	Infusion Equipment for Medical Use—Part 1: Infusion Glass Bottles	ISO 8536–1, Second Edition, 2000–06–01
67	Infusion Equipment for Medical Use—Part 5: Burette Type Infusion Sets	ISO 8536–5, First Edition, 1992–01–15

Item Number	Title of Standards	Reference Number and Date
68	Sterile Hypodermic Syringes for Single Use—Part 2: Syringes for Use With Powder-Driven Syringes Pumps	ISO 7886–2, First Edition, 1996–05–15
69	Stainless Steel Needle Tubing for Manufacture of Medical Devices	ISO 9626, First Edition, 1991–09–11
70	Standard Specification of Phase Change—Type Disposable Thermometer for Intermittent Determination of Human Temperature	ASTM E825–87
71	Standard Specification of Clinical Thermometers (Maximum Self-Registering, Mercury-In-Glass)	ASTM E667–86
72	Sterile, Single-Use Intravascular Catheters—Part 5: Over-Needle Peripheral Catheters, Amendment 1	ISO 10555–5, First Edition, 1996–06–15
73	Standard Specification for Clinical Thermometers Probe Covers and Sheaths	ASTM E1104–86
74	Standard Specification for Clinical Thermometers for Intermittent Determination of Patient Temperature	ASTM E1965–98
75	Infusion Equipment for Medical Use—Part 4: Infusion Sets for Single Use, Gravity Feed	ISO 8536–4, Second Edition, 1998–02–15
76	Transfusion Equipment for Medical Use—Part 4: Transfusion Sets for Single Use	ISO 1135–4, Second Edition, 1998–03–15
77	Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	ASTM F1862–00a
78	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	ASTM F1670–98
79	Conical Fittings With a 6 Percent (Luer) Taper for Syringes, Needles and Certain Other Medical Equipment—Part 2: Lock Fittings	ISO 594–2:1998
80	Standards Specification for Electronic Thermometers for Intermittent Determination of Patient Temperature	ASTM E1112–00 (reapproved 1991)
81	Standard Specification for Direct-Reading Liquid Crystal Forehead Thermometers	ASTM E1601–85
	In Vitro Devices	
54	Immunoprecipitin Analyses: Procedures for Evaluating the Performance of Materials Second Edition; Approved Guideline	NCCLS: D12–A2
55	Procedures for the Handling and Processing of Blood Specimens; Approved Guideline; Second Edition	NCCLS: H18–A2
56	Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobiacally; Approved Standard; Fifth Edition	NCCLS: M7–A5
57	Performance Standards for Antimicrobial Disk Susceptibility Tests; Approved Standard; Seventh Edition	NCCLS: M2–A7
58	Procedures for the Collection of Arterial Blood Specimens; Approved Standard	NCCLS: H1–A3
59	Laboratory Automation: Bar Codes for Specimen Container Identification; Approved Standard	NCCLS: AUTO2–A
60	Laboratory Automation: Specimen Container/Specimen Carrier; Approved Standard	NCCLS: AUTO1–A
61	Laboratory Automation: Communications With Automated Clinical Laboratory Systems, Instruments, Devices, and Information Systems; Approved Standard	NCCLS: AUTO3–A
	Obstetrics–Gynecology/Gastroenterology	
23	Standard Practice For Cleaning and Disinfection of Flexible Fiberoptic and Video Endoscopes Used in the Examination of Hollow Viscera	ASTM F1518–00
24	Standard Performance Specifications for Foley Catheters	ASTM F623–99
25	Electrosurgical Devices	ANSI/AAMI HF18–2001
	Ophthalmic	
27	Ophthalmic Implants—Intraocular Lenses—Part 7: Clinical Investigations	ISO 11979–7:2001
28	Ophthalmic Optics—Contact Lens Care Products—Microbiological Requirements and Test Methods for Products and Regimens for Hygienic Management of Contact Lenses	ISO 14729:2001
29	Ophthalmic Optics—Contact Lens Care Products—Antimicrobial Preservative Efficacy Testing and Guidance on Determining Discard Date	ISO 14730:2000
	Orthopaedic	
123	Standard Specification for Unalloyed Titanium for Surgical Implant Applications (UNS R50250, UNS R50400, UNS R50550, UNS R50700)	ASTM F67–00
124	Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants	ASTM F86–01
125	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants	ASTM F139–00
125	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants	ASTM F139–00
126	Standard Specification for Fixation Pins and Wires	ASTM F366–82 (2000)
127	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications	ASTM F562–00
128	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035)	ASTM F688–00
129	Standard Specification for 18 Chromium-12.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications	ASTM F745–00
130	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539)	ASTM F799–99
131	Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings	ASTM F1044-99
132	Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation	ASTM F1088–87 (1992) e1
133	Standard Specification for Ti6A14V Alloy Castings for Surgical Implants (UNS R56406)	ASTM F1108–97a
134	Standard Specification for Wrought Titanium-6 Aluminum-7 Niobium Alloy for Surgical Implant Applications (UNS R56700)	ASTM F1295–97a
135	Standard Specification for Unalloyed Titanium Wire UNS R50250, UNS R50400, UNS R50550, UNS R50700 for Surgical Implant Applications	ASTM F1341–99
136	Standard Specification for Wrought Titanium-6Aluminum-4Vanadium Alloy for Surgical Implant Applications	ASTM F1472–00

Item Number	Title of Standards	Reference Number and Date
137	Standard Specification for Wrought Cobalt-28-Chromium-6-Molybdenum Alloy for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539)	ASTM F1537–000
138	Standard Specification and Test Methods for External Skeletal Fixation Devices	ASTM F1541–00
139	Standard Specification for Titanium and Titanium-6 Percent Aluminum-4 Percent Vanadium Alloy Powders for Coatings of Surgical Implants	ASTM F1580–95e1
140	Standard Terminology Relating to Spinal Implants	ASTM F1582–98
141	Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components with Torsion	ASTM F1612–95 (2000)
142	Standard Specification for Resurfacing Patellar Prosthesis	ASTM F1672–95 (2000)
143	Surgical Instruments—Metallic Materials—Part 1: Stainless Steel	ISO 7153–1:1991/ Amd.1:1999
144	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673)	ASTM F138–00
145	Standard Practice for Care and Handling of Orthopedic Implants and Instruments	ASTM F565–00
146	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application	ASTM F603–00
147	Standard Specification for Alpha Plus Beta Titanium Alloy Forgings for Surgical Implants	ASTM F620–00
148	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	ASTM F648–00
149	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	ASTM F746–87 (1999)
150	Standard Practice for Permanent Marking of Orthopaedic Implant Components	ASTM F983–86 (2000)
151	Standard Specification for Wrought Cobalt-Chromium Alloy Surgical Fixation Wire	ASTM F1091–91 (2000)
152	Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings	ASTM F1160–00
153	Standard Specification and Test Methods for Intramedullary Fixation Devices	ASTM F1264–00
154	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673)	ASTM F1350–91 (2000)
155	Implants for Surgery—Components for Partial and Total Knee Joint Prostheses—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastics	ISO 7207–2:1998
156	Standard Specification and Test Methods for Metallic Bone Staples	ASTM F564–00
157	Standard Specification and Test Methods for Metallic Medical Bone Screws	ASTM F543–01
	Physical Medicine	
158	Wheelchairs—Part 1: Determination of Static Stability	ISO 7176–1:1999
159	Wheelchairs—Part 2: Determination of Dynamic Stability of Electric Wheelchairs	ISO 7176–2:2001
160	Requirements and Test Methods for Electromagnetic Compatibility	ANSI/RESNA WC/Vol.2–1998, Section 21
	Radiology	
63	Medical Electrical Equipment—Part 2–43: Particular Requirements for the Safety of X-ray Equipment for Interventional Procedures	IEC 60601–2–43–Ed. 1.0
64	Medical Electrical Equipment—Part 2–45: Particular Requirements for the Safety of Mammographic X-ray Equipment and Mammographic Stereotatic Devices	IEC 60601–2–45–Ed. 20
65	Standard Test Method for Measurement of Magnetically Induced Displacment Force on Passive Implants in the Magnetic Resonance Environment	ASTM F2052–00
66	Medical Ultrasound Safety (R1999)	AIUM
67	Determination of Signal to Noise Ratio (SNR) in Diagnostic Magnetic Resonance Images	NEMA MS–1 (R–2000)
68	Acoustic Noise Measurement Procedure for Diagnostic Magnetic Resonance Imaging Device	NEMA MS–4 (R1998)
69	Characterization of Special Purpose Coils for Diagnostic Magnetic Resonance Images	NEMA MS6–2000
70	Digital Imaging and Communications in Medicine-Set Includes PS3.1 Through PS3.14	NEMA PS3 (Set), DICOM Set
71	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	NEMA UD 2–1998 (revision 2)
72	Standard for Real Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment	NEMA UD 3–1998 (revision 1)
73	Medical Electrical Equipment: Radionuclide Calibrators—Particular Methods for Describing Performance Calibration and Usage of Ionization	IEC 61303 (1994–10)
74	Calibration and Usage of Ionization Chamber Systems for Assay of Radionuclides	IEC 61145 (1992-05)
75	Standard for Safety of Photographic Equipment—Fourth Edition	UL–122 (2001)
76	Measurement Procedure for Time-Varying Gradient Fields (dB/dt) for Magnetic Resonance Imaging Systems	NEMA MS7–1998
	Software	
7	Medical Device Software—Software Life Cycle Processes	ANSI/AAMI SW68:2001
	Sterility	
70	Sterilization of Health Care Products—Biological Indicators—Guidance for the Selection, Use and Interpretation of Results, Second Edition	ANSI/AAMI/ISO 14161–2000

Dated: December 18, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–852 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public that the U.S. Fish and Wildlife Service (Service), in cooperation with the Oregon Department of Fish and Wildlife (ODFW), The Nature Conservancy (TNC), and Portland General Electric (PGE), intends to gather information necessary to prepare an environmental document (environmental assessment or environmental impact statement) regarding the proposed Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (MSCCAA) and issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). Threemile Canyon Farms is the potential permit applicant.

The Service is furnishing this notice in order to: (1) Advise other Federal and State agencies, affected tribes, and the public of our intentions; (2) announce the initiation of a 30-day public scoping period; and (3) to obtain suggestions and information on the scope of issues to be included in the environmental document.

DATES: Written comments from all interested parties must be received on or before February 13, 2002.

ADDRESSES: Comments should be addressed to Kemper McMaster, State Supervisor, USFWS, 2600 SE 98th Ave., Suite 100, Portland, OR 97266, telephone (503) 231–6179, facsimile (503) 231–6195.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, (503) 231–6179.

SUPPLEMENTARY INFORMATION: Candidate Conservation Agreements with Assurances contain a strategy for covered lands and activities that demonstrate an applicant's contribution to preclude or remove the need to list a covered species as threatened or endangered under the Act. In return, the applicant is provided with regulatory certainty that they will not be required to provide additional conservation measures should any of the covered species become listed under the ESA in the future. The MSCCAA will cover approximately 93,000 acres near Boardman, Oregon, including a 23,000-acre wildlife conservation area managed by TNC and property owned by PGE located within the plan boundaries. The primary goal of the MSCCAA is to implement a variety of habitat conservation measures for the following covered species: the Washington ground squirrel (*Spermophilus washington*), ferruginous hawk (*Buteo regalis*), loggerhead shrike (*Lanius ludovicianus*), grasshopper sparrow (*Ammodramus savannarum*), and the sage sparrow (*Amphispiza belli*). Conservation measures will focus on restoration and re-establishment of native plant communities including sagebrush and bitterbrush steppe along with grassland species such as needle and thread (*Stipa spp.*). Other measures include control of exotic species and implementation monitoring. Potential covered activities include: mechanized farming and dairy operations; product transportation; road construction, use and maintenance; site preparation; fertilizer application; fire suppression; prescribed burning and other agricultural or habitat restoration activities.

The Service will conduct an environmental review of the Plan and prepare an environmental document. The review will analyze the proposal, as well as a full range of reasonable alternatives, and the associated impacts of each. Should information become available during the scoping process that indicates the likelihood of significant impacts from the proposed project, an Environmental Impact Statement will be prepared. Otherwise, an Environmental Assessment will be prepared. Comments and suggestions are invited from all interested parties to ensure the full range of issues related to this proposed action are identified. Comments, or questions should be addressed to the Service at the address or telephone number provided above.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations 40 CFR (1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Service for compliance with those regulations.

Dated: January 8, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–849 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0122).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Filing Sureties.''

DATES: Submit written comments on or before March 15, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION:

Title: Filing Sureties.

OMB Control Number: 1010–0122.

Bureau Form Number: Forms MMS–4435 and 4436.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in

carrying out DOI's Indian trust responsibility.

Regulations in 30 CFR part 243 allow lessees, designees, or payors who can demonstrate that they are financially solvent to stay the effectiveness of an MMS order or decision without posting a surety instrument (Federal leases only). For those who are not financially solvent or for appeals involving Indian leases, MMS requires that a surety instrument be posted to secure the financial interests of the public and Indian lessors during the entire administrative or judicial appeal process. MMS accepts the following types of surety instruments:

- Form MMS–4435, Administrative Appeal Bond;
- Form MMS–4436, Letter of Credit;
- Certificates of Deposit; and
- U.S. Treasury Securities.

This information collection covers the hour burden associated with submitting annual audited financial statements or the surety instruments listed above. Submission of the information in this collection is necessary to stay the effectiveness of an MMS order or decision issued for a Federal and Indian property. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 300 Federal or Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 300 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon.

Public Comment Policy. We will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 16, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–881 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings for Calendar Year 2002

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 2002 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 22—San Francisco, CA
Saturday, February 2—Point Reyes, CA
Tuesday, February 26—San Francisco, CA
Tuesday, March 26—San Francisco, CA
Tuesday, April 23—San Francisco, CA
Saturday, May 4—Point Reyes, CA
Tuesday, May 28—San Francisco, CA
Tuesday, June 25—San Francisco, CA
Tuesday, July 23—San Francisco, CA
Tuesday, August 27—San Francisco, CA
Tuesday, September 24—San Francisco, CA
Saturday, October 19—Point Reyes, CA
Tuesday, October 22—San Francisco, CA
Tuesday, November 26—San Francisco, CA

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service areas in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Lennie Roberts
Dr. Edgar Wayburn
Mr. Michael Alexander
Mr. Gordon Bennett
Ms. Anna-Marie Booth
Ms. Yvonne Lee
Ms. Susan Giacomini Allan
Mr. Trent Orr
Mr. Redmond Kernan
Mr. Doug Nadeau
Ms. Betsey Cutler
Mr. Trent Orr
Mr. Dennis Rodoni
Mr. John J. Spring
Mr. Fred Rodriguez
Mr. Paul Jones

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, February 2, Saturday, May 4 and Saturday, October 19 meetings, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California. However, some meetings may be held at other locations in Marin County or at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancellations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

Anticipated possible agenda items at meetings during calendar year 2002 may include:

- Updates on Advanced Notice of Proposed Rulemaking (ANPR)
- Updates on Planning Issues for Fort Baker
- Doyle Drive Scoping Overview and Public Comment
- Updates on Presidio Vegetation Management Plan
- Updates on Marin Comprehensive Transportation Planning
- Reports on Park Site Ferry Planning
- Updates on Park 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Update reports on Crissy Field Education Center
- Reports on GGNRA education programs
- Update on Plans for Crissy Field projects
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan, including the Merrie Way Visitor Center
- Update Reports on Fort Mason Center Pier One and Pier 2 Seismic Work
- Reports on park equestrian permits
- GGNPA annual briefing
- Redwood Creek Watershed Planning
- Reports on Alcatraz Historic Preservation and Safety Construction
- Update on park expansion legislation
- Update on transfer of properties in GGNRA boundary to NPS
- Issues affecting San Mateo County national park lands
- Update on Caltrans Highway 92 and Devils Slide tunnel projects
- Update reports on ''Park Partner'' programs, including Bay Area Discovery Museum plans, Marine Mammal Center planning, and Slide Ranch site improvements
- Updates on Fort Mason Reuse projects and Upper Fort Mason planning
- Updates on Presidio Trails Master Plan and Presidio Mountain Lake projects
- Updates on issues concerning areas managed by the Presidio Trust, and
- Updates on issues concerning management and planning at Point Reyes NS, including Point Reyes NS General Management Plan updates.

These meetings will also contain Superintendent's Report and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site nps.gov/goga under the section ''Advisory Commission''.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 13. 2001.

Mary Gibson Scott,

Acting General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 02–865 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–929–931 (Final)]

Silicomanganese From India, Kazakhstan, and Venezuela

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: On November 9, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigations (66 FR 59596, November 29, 2001). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from January 22, 2002, to March 25, 2002 (66 FR 63522, December 7, 2001, and 66 FR 67185, December 28, 2001). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 21, 2002; the prehearing conference, if needed, will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 25, 2002; the prehearing staff report will be placed in the nonpublic record on March 15, 2002; the deadline for filing prehearing briefs is March 22, 2002; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 2, 2002; the deadline for filing posthearing briefs is April 8, 2002; the Commission will make its final release of information on

April 22, 2002; and final party comments are due on April 24, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–891 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: Notice of second annual report, scheduling of public hearing, and request for public comments.

EFFECTIVE DATE: January 7, 2002.

SUMMARY: The Commission has announced the schedule for its second annual report in investigation No. 332–427, U.S. Market Conditions for Certain Wool Articles, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on February 12, 2001, at the request of the United States Trade Representative (USTR).

FOR FURTHER INFORMATION CONTACT: For general information, contact Lisa Ferens (202–205–3486; *lferens@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background:

As requested by the USTR, the Commission will provide information for 2001 and year-to-date 2001–02 on U.S. market conditions, including domestic demand, domestic supply, and domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabrics and yarn used in the manufacture of such clothing; and wool fibers used in the manufacture of such fabrics and yarn. Also, as requested by the USTR, the Commission will provide, to the extent possible, data on:

(1) Increases or decreases in sales and production of the subject domestically-produced worsted wool fabrics;

(2) Increases or decreases in domestic production and consumption of the subject apparel items;

(3) The ability of domestic producers of the subject worsted wool fabrics to meet the needs of domestic manufacturers of the subject apparel items in terms of quantity and ability to meet market demands for the apparel items;

(4) Sales of the subject worsted wool fabrics lost by domestic manufacturers to imports benefiting from the temporary duty reductions on certain worsted wool fabrics under the tariff-rate quotas (TRQs) provided for in headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTS);

(5) Loss of sales by domestic manufacturers of the subject apparel items related to the inability to purchase adequate supplies of the subject worsted wool fabrics on a cost competitive basis; and

(6) The price per square meter of imports and domestic sales of the subject worsted wool fabrics. The USTR requested that the Commission submit its second (and final) annual report under this investigation by September 16, 2002. The USTR has stated that it will provide copies of the Commission's confidential reports to the U.S. Department of Commerce. The USTR requested that the Commission issue a public version of the annual report, as soon as possible thereafter, with any business confidential information deleted. The Commission submitted its first annual report to the USTR on September 17, 2001.

Public Hearing:

A public hearing in connection with preparation of the second annual report will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 18, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 2, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 4, 2002. The deadline for filing post-hearing briefs or statements is 5:15 p.m., April 29, 2002. In the event that, as of the close of business on April 2, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 2, 2002, to determine whether the hearing will be held.

Written Submissions:

In connection with preparation of the second annual report for the USTR, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission. In lieu of or in addition to participating in the above-referenced hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission by no later than the close of business on April 29, 2002. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in its reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that would reveal the individual operations of the firm supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects:

Tariffs, Imports, Wool, Fabric, and Suits.

Issued: January 8, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–889 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by COB March 11, 2002.

EFFECTIVE DATE: January 7, 2002.

Purpose of Information Collection

The forms are for use by the Commission in connection with its second, and final, annual report for investigation No. 332–427, U.S. Market Conditions for Certain Wool Articles, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR), which asked that the Commission submit its second annual report by September 16, 2002.

Summary of Proposal

(1) *Number of forms submitted:* 3.

(2) *Title of forms:* Questionnaire for U.S. Producers of Worsted Wool Fabrics; Questionnaire for U.S. Purchasers of Worsted Wool Fabrics; Questionnaire for U.S. Importers of Worsted Wool Fabrics.

(3) *Type of request:* reinstatement with change.

(4) *Frequency of use:* one-time use.

(5) *Description of respondents:* U.S. producers, purchasers, and importers of worsted wool fabrics.

(6) *Estimated number of respondents:* 56 (producers, purchasers, and importers).

(7) *Estimated total number of hours to complete the forms:* 1,245 hours.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the forms and supporting documents may be obtained from Lisa Ferens (202–205–3486; *lferens@usitc.gov*) of the Office of Industries, U.S. International Trade Commission. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals may obtain information on this matter by contacting the Commission's TTD terminal (telephone No. 202–205–1810). General information about the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: January 8, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–890 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ) Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until March 15, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact George Schneider, Special Counsel in the Voting Section of the Civil Rights Division, 1800 G Street, NW., Washington, DC 20008.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. *Applicable Component:* Civil Rights Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, local or tribal governments. *Other:* None. Jurisdictions specifically covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that proposed voting changes are not racially discriminatory.

The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 10,103 respondents with the average response at 10.021 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 47,365 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: January 8, 2002

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–867 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Medical Certification for Disability Exception.

The Department of Justice (DOJ), Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 66, Number 176, page 47240) on September 11, 2001, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 13, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N–648, Immigration and Naturalization Service, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Affected Public:* Individuals or households. The Immigration and Naturalization Service uses the Form N–648 medical certification issued by the licensed medical professional to substantiate a claim for an exception to the requirements of section 312(a) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 20,000 respondents. The amount of estimated time required for the average respondent to respond is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Robert Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 8, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–892 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: National Survey of Public Participation in the Arts. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before

March 20, 2002. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Tom Bradshaw, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 617, Washington, DC 20506–0001, telephone (202) 682–5432 (this is not a toll-free number), fax (202) 682–5677.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 02–879 Filed 1–11–02; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility ad clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form.

OMB Approval Number: 3145–0001.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

Abstract: The North Atlantic Treaty Organization (NATO) initiated its Advanced Study Institutes Program in 1958 modeled after a small number of very successful summer science ''courses'' that were held in Europe and that sought to rebuild Europe's science strength following World War II. The goal was to bring together both students and researchers from the leading centers of research in highly targeted fields of science and engineering to promote the ''American'' approach to advanced learning, spirited give-and-take between students and teachers, that was clearly driving the rapid growth of U.S. research strength. Today the goal remains the same; but due to the expansion of NATO, each year an increasing number of ASIs are held in NATO Partner Countries along with those held in the original NATO Member countries. In the spirit of cooperation with this important activity, the Foundation inaugurated in 1959 a small program of travel grants for advanced graduate students and young postdoctorals to assist with the major cost of such participation, that of transatlantic travel. It remains today a significant means for young scientists and engineers to develop contact with their peers throughout the world in their respective fields of specialization.

The Advanced Study Institutes (ASI) travel awards are offered primarily to advanced graduate students, but include recent postdoctoral students and new science faculty members, to attend one of the NATO's ASIs held in the NATO-member and partner countries of Europe. The NATO ASI program is targeted to those individuals nearing the completion of their doctoral studies in science, mathematics, and engineering who can take advantage of opportunities to become familiar with progress in their respective fields of specialization in other countries.

The following describes the procedures for the administration of the Foundation's NATO Advanced Study Institute (ASI) Travel Awards, which provide travel support for a number of U.S. graduate students and postdoctoral participants to attend the ASIs scheduled for Europe.

- Advanced Study Institute Determination

Once NATO has notified us that the schedule of institutes is final, and we have received the descriptions of each institute, we determine which institutes NSF will support. The ASI travel award program supports those institutes that offer instruction in the fields of science traditionally supported by NSF as published in *Guide to Programs.*

The program will not support institutes that deal with clinical topics, biomedical topics, or topics that have disease-related goals. Examples of areas of research that will not be considered are epidemiology; toxicology; the development or testing of drugs or procedures for their use; diagnosis or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals; and animal models of such conditions. However, the program does support institutes that involve research in bioengineering, with diagnosis or treatment-related goals that apply engineering principles to problems in biology and medicine while advancing engineering knowledge. The program also supports bioengineering topics that aid persons with disabilities. Program officers from other Divisions in NSF will be contacted should scientific expertise beyond our own be required in the determination process.

- Solicitation for Nominations

Following the final determination as to which Advanced Study Institutes

NSF will support, we contact each institute director to ask for a list of up to 5 nominations to be considered for NSF travel support.

• EHR Contact with the Individuals Nominated

Each individual who is nominated by a director will be sent the rules of eligibility, information about the amount of funding available, and the forms (NSF Form 1379, giving our Finance Office electronic banking information; NSF Form 1310 (already cleared), and NSF Form 192 (Application for International Travel Grant)) necessary for our application process.

• The Funding Process

Once an applicant has been selected to receive NSF travel award support, his or her application is sent to our Finance office for funding. They electronically transfer the amount of $1000 into the bank or other financial institution account identified by the awardee.

Our plan is to have the $1000 directly deposited into the awardee's account prior to the purchase of their airline ticket. An electronic message to the awardee states the NSF is providing support in the amount of $1000 for transportation and miscellaneous expenses. The letter also states that the award is subject to the condition in F.L. 27, *Attachment to International Travel Grant*, which states the U.S. flag-carrier policy.

As a follow-up, each ASI director may be asked to verify whether all NSF awardees attended the institute. If an awardee is identified as not utilizing the funds as prescribed, we contact the awardee to retrieve the funds. However, if our efforts are not successful, we will forward the awardee's name to DGA, which has procedures to deal with that situation.

We also ask the awardee to submit a final report on an NSF Form 250, which we provide as an attachment to the electronic award message.

• Selection of Awardees

The criteria used to select NSF Advanced Study Institute travel awardees are as follows:

1. The priority of selection is by the status level of the applicant:

(a) Advanced graduate student, or

(b) Recent post-doc (Ph.D. received no earlier than three years before the ASI).

(c) New faculty with Ph.D.'s received no earlier than three years before the ASI).

2. We shall generally follow the order of the nominations, listed by the director of the institute, within priority level.

3. Those who have not attended an ASI in the past will have a higher priority than those who have.

4. Nominees from different institutions and research groups have higher priority than those from the same institution or research group. (Typically, no more than one person is invited from a school or from a research group.)

Use of the Information: For NSF Form 192, information will be used in order to verify eligibility and qualifications for the award.

For NSF Form 250, information will be used to verify attendance at Advanced Study Institute and will be included in Division annual report.

Estimate of Burden: Form 192—1.5 hours; Form 250—2 hours.

Respondents: Individuals.

Estimated Number of Responses per Award: 150 responses, broken down as follows: For NSF Form 250, 75 respondents; for NSF Form 192, 75 respondents.

Estimated Total Annual Burden on Respondents: 262.5 hours, broken down by 150 hours for NSF Form 250 (2 hours per 75 respondents) and 112.5 hours for NSF Form 192 (1.5 hours per 75 respondents).

Dated: January 8, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 02–790 Filed 1–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its February 14, 2001, application for proposed amendment to Facility Operating License No. DPR–64 for the Indian Point Nuclear Generating Unit No. 3 (IP3), located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications to extend the allowed outage time for the emergency diesel generators and the associated fuel oil storage tanks from 72 hours to 14 days on a one-time basis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 21, 2001 (66 FR 15922). However, by letter dated December 5, 2001, the licensee withdrew the proposed change.

Further details with respect to this action, see the application for amendment dated February 14, 2001, as supplemented on July 25, 2001, and the licensee's letter dated December 5, 2001, which withdrew the application for license amendment. 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 Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm./adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Sr. Project Manager, Section 1, Project Directorate, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–847 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Amergen Energy Company, LLC; Three Mile Island Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR), section 50.44; 10 CFR part 50, appendix A, General Design Criterion 41; and 10 CFR part 50, appendix E, section VI, for Facility Operating License No. DPR–50 issued to AmerGen Energy Company, LLC, (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt TMI–1 from certain requirements of 10 CFR 50.44; 10 CFR part 50, appendix A, General Design Criterion 41; and part 10 CFR 50, appendix E, section VI, pertaining to the hydrogen control system requirements (i.e., containment post-accident hydrogen monitors, recombiners, and hydrogen purge system); and remove these requirements from the TMI–1 design basis. The licensee's request for an exemption from the functional requirement for hydrogen monitoring is not being approved. The NRC staff's position, with respect to each of the licensee's specific exemption requests, will be documented in the exemption. Consequently, this environmental assessment addresses only the exemption from the requirements related to the recombiners and the hydrogen purge system and the removal of these requirements from the TMI–1 design basis.

The proposed action is in accordance with the licensee's letter dated September 20, 2000, as supplemented by letters dated August 2 and September 28, 2001.

The Need for the Proposed Action

The proposed exemption from the requirements pertaining to recombiners and the hydrogen purge system, and their associated removal from the design basis, would improve the safety focus at TMI–1 during an accident, and provide for a more effective and efficient method of maintaining adequate protection of public health and safety by simplifying the Emergency Plan and Emergency Plan Implementing Procedures. This would reduce the operators' post-accident burden and allow them to give higher priority to more important safety functions following postulated plant accidents.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no environmental impacts associated with the removal of the recombiners and hydrogen purge system from the TMI–1 design basis.

The proposed action will not significantly 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. It does not 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 NRC 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

The action does not involve the use of any resources not previously considered in the Final Environmental Statement for TMI–1, dated December 1972.

Agencies and Persons Consulted

On December 11, 2001, the staff consulted with the Pennsylvania State official, Mr. Michael Murphy of the Pennsylvania Bureau of Radiation 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 letter dated September 20, 2000, as supplemented by letters dated August 2 and September 28, 2001. 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 Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate l, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–848 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 24–26, 2002, Hawthorn Suites, 6435 Westwood Blvd., Orlando, Florida, in Conference Room Magnolia A.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, January 24, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss matters related to future plant designs, including: regulatory challenges associated with the licensing of future plant designs (e.g., Pebble Bed Modular Reactor and Gas Turbine Modular Helium Reactor); use of PRA and defense-in-depth concept for advanced reactor designs; and issues related to Westinghouse AP1000 design. Also, it will discuss the NRC Safety Research Program, including proposed advanced reactor research plan, new areas of research, and draft ACRS report to the Commission on the NRC Safety Research Program.

Friday, January 25, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the use of formal decision analysis and the role of SAPHIRE Code in the risk-informed regulatory structure. Also, it will discuss matters associated with core power uprates, including: use of risk information in evaluating power

uprate applications; criteria to be used by the ACRS in endorsing power uprates including PWR power uprates expected in the future; and lessons learned from the review of power uprate applications.

Saturday, January 26, 2002—8:30 a.m.—12:30 p.m.

The Subcommittee will discuss the significance determination process (SDP), including: need for an SDP based on low-power and shutdown operations PRAs or other shutdown management tools; peer review of SPAR models and SDP worksheets; and thresholds for performance indicators. Also, the Subcommittee will discuss adequacy of the process for conducting ACRS business.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee.

Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designed Federal Official, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 8, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–846 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45239; File No. SR–NASD–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Material Regarding Interfering With the Transfer of Customer Accounts

January 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2001, 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'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation proposes to interpret NASD Rule 2110 to prohibit members from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

The text of the proposed rule change appears below. New text is in italic.

* * * * *

IM 2110–7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

NASD Regulation represents that, as a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, NASD Regulation asserts that the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, NASD Regulation represent when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may request that the registered representative's former firm transfer their accounts to the registered representative's new firm so that the clients may continue their relationship with the registered representative. NASD Regulation asserts that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new employer, or soliciting clients to transfer their accounts to the registered representative's new firm, sometimes seeks a court order to prevent the transfer of accounts to the registered representative's new firm.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to

NASD Regulation asserts that in some cases members have obtained relief in the form of court orders requiring the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. NASD Regulation asserts that members also have obtained court orders requiring the registered representative's new firm to send letters to customers that may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

NASD Regulation believes that it is inconsistent with the high standards of commercial honor and just and equitable principles of trade mandated by NASD Rule 2110 for a member, in the context of an employment dispute with a former registered representative, to seek to override a customer's request to transfer his or her account by obtaining a court order stopping the transfer. NASD Regulation believes that customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts. Moreover, NASD Regulation believes that customers whose account transfer requests have been delayed in this manner could be deprived of brokerage services and access to their accounts while their registered representative and his or her former firm attempt to resolve an employment dispute.

In NASD Notice to Members 79–7 (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. NASD Regulation believes that obtaining court orders to prevent customers from following a registered representative to a different firm are similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this practice, the NASD submits this proposed rule change to adopt Interpretive Material 2110–7, which would state that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. The proposed rule change would not affect the operation of Rule 11870 (governing customer account transfers). NASD Regulation represents that members would continue to have the ability to delay or take exception to account transfers in situations where, for example, the account contains nontransferable assets or the transfer request provides information that is inadequate to identify the account to be transferred.[4]

NASD Regulation represents that the proposed rule change does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Similarly, NASD Regulation believes that the proposal would not prevent a firm from enforcing employment agreements with former representatives. For example, NASD Regulation represents that a member could seek an injunction against a former registered representative and/or his or her new firm to prohibit solicitation of the member's customers if the registered representative had signed an employment contract agreeing not to solicit those customers. Rather, NASD Regulation represents that the proposed rule change is limited to restricting a member from interfering with a customer's right to transfer his or her account in the context of an employment dispute, once the customer has requested the transfer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that member firms that seek to override a customer's request to transfer his or her account to a new firm in the context of an employment dispute with a former registered representative violate NASD Rule 2110. NASD Regulation believes that this proposed rule change is necessary to protect investors and the public interest with respect to transfers of customers accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On May 22, 2001, NASD Regulation published Notice to Members 01–36 (''NTM 01–36'') seeking comment on a proposed interpretive material to NASD Rule 2110 that would state:

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to take any action that, directly or indirectly, interferes with a customer's ability to transfer his or her account, including seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

The comment period expired on July 5, 2001. Eighty-five comments were received in response to the notice. Of the 85 comments received, 67 agreed that customers should have the ability to move their accounts to new firms without interference from the member firm holding the account. These commenters expressed the view that a firm should not be able to override a customer's decision to move his or her account to a new firm.

Other commenters, while generally supportive of a customer's right to transfer an account to his or her brokerage firm of choice, raised concerns that the language of the proposed interpretative material could impede a member's ability to collect debts and enforce liens against a customer's account. These commenters suggested that the proposed interpretative material should not prevent a member from interfering with a customer's ability to transfer his or her account to avoid paying debts accrued in the account or to evade a lien on assets held in the account. Because

seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending before the SEC. NASD Regulation represents that the (instant) proposed rule change would not conflict with or affect the operation of Rule 10335 (i.e., the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes), but rather would address the substantive problem of customer harm resulting from firms obtaining temporary injunctive relief that prevents customers from transferring their accounts.

[4] The SEC recently approved amendments to NASD Rule 11870 that facilitate the transfer of customer accounts containing third party proprietary products by allowing a firm receiving a customer account from another firm to assess whether the account contains assets that the receiving firm is unable to support, and to inform the customer of his or her available options concerning those assets. *See* Exchange Act Release No. 44787 (September 12, 2001), 66 FR 48301 (September 19, 2001).

[5] 15 U.S.C. 78o–3(b)(6).

NASD Regulation did not intend to interpret rule 2110 in a manner that would affect the ability of members to collect debts or enforce liens against customers, the language contained in NTM 01–36 has been modified for this proposed rule change to clarify the inapplicability of the proposed rule change in these contexts.

Numerous commenters described other situations in which they thought a member should be able to take action to stop a customer from transferring his or her account. NASD Regulation represents that existing NASD rules address many of these situations. In certain other situations described by commenters, NASD Regulation believes that the right of a customer to transfer his or her account, once the customer has requested the transfer, should take precedence. For example, some commenters believed that a member should be able to interfere with a customer's ability to transfer his or her account to follow the member's registered representative to a new firm if the registered representative did not disclose to customers the consequences of the transfer (e.g., transfer fees and manner of disposition of any non-transferable assets).

While this scenario raises concerns, NASD Regulation believes that the current regulatory scheme addresses these concerns. NASD Regulation represents that firms are required to deliver to customers information regarding the applicable fees for opening, maintaining and closing an account. In addition, NASD Rule 11870 requires that customers requesting transfer of an account be notified of non-transferable assets in an account. NASD Regulation notes that anti-fraud provisions, as well as NASD Rule 2110, are available to address false or misleading statements a registered representative may have made to a customer to induce the customer to transfer his or her account.

Some commenters suggested that a member should be able to interfere with the customer's ability to transfer his or her account to follow one of the member's registered representatives to a new firm if the customer was the client of one of the member's other registered representatives, or if the customer opened the account to form a relationship with the member, and not with a particular registered representative. NASD Regulation believes that the customer's decision should be controlling, even under these circumstances.

Sixteen commenters objected to the adoption of an interpretative material that would prohibit members from interfering with a customer's request to transfer his or her account to a new firm when the customer sought to follow a registered representative to a new firm. Among the objections raised were concerns that such an interpretation would encourage registered representatives to breach employment contracts. NASD Regulation, however, represents that nothing in NTM 01–36 or this proposed rule change gives registered representatives the right to breach employment contracts or disclose personal nonpublic information in violation of law. Further, NASD Regulation notes that member firms may seek redress against a registered representative who acts in this manner by, for example, seeking from the registered representative monetary damages or an injunction from further misconduct.

Other commenters asserted that the proposal was inconsistent with the Gramm-Leach-Bliley Act of 1999 (''GLBA''), which requires companies to safeguard the confidentiality of customer information, because a company pursuing legal action against a registered representative pursuant to the member's obligations to protect customer information under GLBA could be in violation of the interpretation. NASD Regulation, however, believes that the proposed rule change does not prohibit a member from taking action against a registered representative as necessary to safeguard confidential customer information. NASD Regulation believes that the proposed rule change prevents a member from taking action to restrict a customer's ability to transfer his or her account to a new firm once the customer has requested the transfer. NASD Regulation believes that, to the extent that any improper sharing of confidential customer information occurred before the customer's decision to transfer, the firm could seek legal redress without interfering with the customer's decision to move his or her account.

Commenters objecting to the proposal also expressed concern that the interpretation deprived members of access to legal remedies available to resolve employment disputes. NASD Regulation represents that the proposed rule change does not deny to members remedies that assist in resolving employment disputes between members and their former registered representatives; the proposed rule change articulates the view of the Association that it is inconsistent with just and equitable principles of trade for a member to harm customers as a means of resolving employment disputes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [6] and paragraph (f)(1) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2001–95 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–883 Filed 1–11–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(1).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45251; File No. SR–NYSE–2001–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 902 To Permit the Submission of Member to Member Coupled Orders in Crossing Session I in Order To Close Out Error Positions

January 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2001, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 NYSE proposes to amend NYSE Rule 902, Off-Hours Trading Orders, to permit the submission of member to member coupled orders in Crossing Session I in order to close out error positions. The text of the proposed rule change is below. Proposed new language is in italic.

Rule 902. Off-Hours Trading Orders

(a) Entry of Orders

(i) Closing-Price Orders

Subject to Rule 906 (Impact of Trading Halts on Off-Hours Trading), a member or member organization may enter into the Off-Hours Trading Facility a closing-price order at such times as the Exchange may specify.

(ii) Closing-Price Coupled Orders

(A) Subject to Rule 906, a member or member organization may enter into the Off-Hours Trading Facility a closing-price order to buy coupled with a closing-price order to sell the same quantity of the same security for execution against each other. However, except for those orders defined in paragraphs (ii)(B) *and (C)* of this rule, a member or member organization may not so enter such coupled orders if both such orders are for an account in which any member or member organization, or any ''associated party'' (as paragraph (b)(ii) of Rule 800 (Basket Trading: Applicability and Definitions) defines that term), has a direct or indirect interest.

(B) A member or member organization may enter a closing-price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization which has agreed to offset all or part of any market-on-close imbalance that existed in the stock prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session.

(C) A member or member organization may enter a closing price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization where such member or member organization is acting to offset a transaction made in error. Both parties to the closing price transaction must maintain a specific written record that the purpose of the coupled order was to close out an error.

(iii) Aggregate-Price Coupled Orders

A member or member organization may only enter into the Off Hours Trading Facility an aggregate-price order to buy (sell) that is coupled with an aggregate-price order to sell (buy) the same quantities of the same securities.

(b)–(g) No change.

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 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

In SR–NYSE–99–25,[3] the Commission approved initiatives to strengthen the regulation of activities of members on the Exchange Floor (''Floor''). The initiatives consisted of amendments to NYSE Rule 134, Differences and Omissions—Cleared Transactions (''QTs''), and a new rule, NYSE Rule 407A, Disclosure of All Members Accounts. The Exchange is now proposing an amendment to its after-hours crossing session procedures to facilitate the handling of error transactions on the Floor.

In 1991, the Exchange established its ''Off-Hours Trading Facility.''[4] One of its stated purposes was to recapture order flow in NYSE listed securities that was being executed offshore. The Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4 p.m. trading session. ''Crossing Session I'' is the session from 4:15 p.m. to 5 p.m. during which orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a trading halt under NYSE Rule 80B, Trading Halt Due to Extraordinary Market Volatility) or is halted after 4 p.m.[5] During Crossing Session I, orders may be entered via SuperDOT and may be canceled up to 5 p.m. Eligible orders on the specialist's book will automatically participate in Crossing Session I.

NYSE Rule 902, Off-Hours Trading Orders, currently allows coupled orders to buy and sell the same amount of the same security to be entered into Crossing Session I. Moreover, NYSE Rule 902 provides that coupled orders cannot be entered into Crossing Session I if each side of the coupled order is for the account of a member or member organization. The only exception currently provided for in NYSE Rule 902 is a situation in which a member or member organization and a specialist member organization enter a coupled order in a stock, which has the effect of offsetting all or a part of any market-on-close imbalance that existed in such stock prior to the official closing of the 9:30 a.m. to 4 p.m. trading session.

The Exchange believes it is appropriate to add an additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 44769 (September 6, 2001), 66 FR 47710 (September 13, 2001); 44427 (June 14, 2001), 66 FR 33282 (June 21, 2001); and 42381 (February 3, 2000), 65 FR 6673 (February 10, 2000).

[4] *See* Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994).

[5] The NYSE confirmed that the new exception to NYSE Rule 902(a)(ii) (embodied in proposed NYSE Rule 902(a)(ii)(C)) is subject to NYSE Rule 906, Impact of Trading Halts on Off-Hours Trading, and, therefore, the proposed exception does not permit trading of a security that is subject to a trading halt under NYSE Rule 906(a) or (b). Telephone discussion between Donald Siemer, Director Rule Development, Market Surveillance Division, NYSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (January 7, 2002).

exception in NYSE Rule 902 to permit a coupled order to be submitted in Crossing Session I to address situations where a member or member organization wishes to close out an error at the closing price on the Exchange, and the specialist has agreed to take the other side of the trade. Both parties to the coupled order would be required to maintain a specific written record that the purpose of the coupled order was to close out an error.

An error discovered at or around the close can be closed out promptly at the closing price, ensuring that the error is closed out in a timely manner. Such a procedure is also a benefit to members in that it ensures that the member does not have to bear any overnight market risk with respect to the error. Thus, the proposed procedure is timely, efficient, and reduces market risk to members.

This proposed procedure is a limited exception available only to facilitate timely resolution of errors and is not intended for any other purpose. Therefore, it is not a means whereby professional traders in the normal course of trading may step ahead of retail or any other investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange 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 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.

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 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.

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 Exchange. All submissions should refer to File No. SR–NYSE–2001–49 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–884 Filed 1–11–02; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular on Internet Communications of Aviation Weather and NOTAMs

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed advisory circular.

SUMMARY: The Department of Transportation, in accordance with 49 CFR 1.47, delegated responsibility for aviation safety oversight to the Federal Aviation Administration (FAA). The FAA has proposed the development of Advisory Circular (AC) 00-xx, Internet Communications of Aviation Weather and NOTAMs, that describes the process for any person or organization providing access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become and remain a Qualified Internet Communications Provider (QICP).

DATES: Comments must be received on or before February 13, 2002.

ADDRESSES: Written comments are invited on all aspects of the proposed AC. Commenters must identify draft AC 00-xx, Internet Communications of Aviation Weather and NOTAMs. Send or deliver all comments on the proposed AC to the following location: Federal Aviation Administration, Aerospace Weather Policy Staff, ARS–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Albersheim, FAA, Aerospace Weather Policy Staff, ARS–100, 800 Independence Ave., SW., Washington, DC 20591, 202–385–7704, Steven.Albersheim@faa.gov.

SUPPLEMENTARY INFORMATION: Aviation weather information is available on the Internet from a variety of government and vendor sources with minimal quality control. Users of the National Airspace System, dispatchers, pilots and air traffic controllers/specialists have expressed interest in the ability to utilize the Internet to retrieve aviation weather text and graphic products for operational decision-making. The FAA proposes to establish the process in an AC for providers who disseminate aviation weather data and NOTAMs via the Internet to become QICPs for the purpose of ensuring the reliability, accessibility and security of the data and encouraging the identification of the approval status of products. The proposed AC will provide information on the QICP process and recommended practices as well as the procedures for a provider to maintain QICP status. The FAA Aerospace Weather Standards Staff (ARS–200) proposes to maintain a current list of all QICPs on a designated Web page accessible by the general public.

Issued in Washington, DC, on January 8, 2002.

David Whatley,

Director, Aerospace Weather Policy & Standards, Air Traffic System Requirements Service.

BILLING CODE 4910–13–P

Advisory Circular

U.S. Department of Transportation
Federal Aviation Administration

Subject: INTERNET COMMUNICATIONS OF AVIATION WEATHER AND NOTAMS

Date: xxxxx **Initiated by:** ARS-100

AC No.: 00-xx

1. PURPOSE. This Advisory Circular (AC) describes the process for any person or organization that provides access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become a Qualified Internet Communications Provider (QICP).

The FAA Aerospace Weather Standards Staff (ARS-200) is responsible for establishing and maintaining a current list of all QICPs on a designated Web page accessible by the general public.

This AC pertains only to Internet communications between a civil aviation user and a QICP. This AC addresses data quality only to the extent of considering QICP security practices to protect data from unauthorized modification and encouraging the identification of the operational or experimental status of QICP products. The FAA Web page containing the current list of all QICPs contains a notice that being listed as a QICP does not mean that the quality of the QICP data (e.g., accuracy, timeliness or content) is certified or otherwise approved by the FAA.

Like all advisory material, this AC is not mandatory and does not constitute a regulation. Definitions used in this AC are contained in Appendix 1.

2. GENERAL. A person or organization that accomplishes and maintains the following as they pertain to the provider's facility (i.e., all hardware, software and Internet connectivity under the applicant's direct control) may become an approved QICP:

a. **Reliability** means users are able to retrieve requested data from the provider with no outage lasting longer than 10 minutes, and no more than 30 minutes of total outages (including outages due to maintenance) in any continuous 3-month period.

b. **Accessibility** means turnaround time within the provider's facility. The provider should be capable of initiating transmission of requested data during transactions with 100% of its users within 2 minutes.

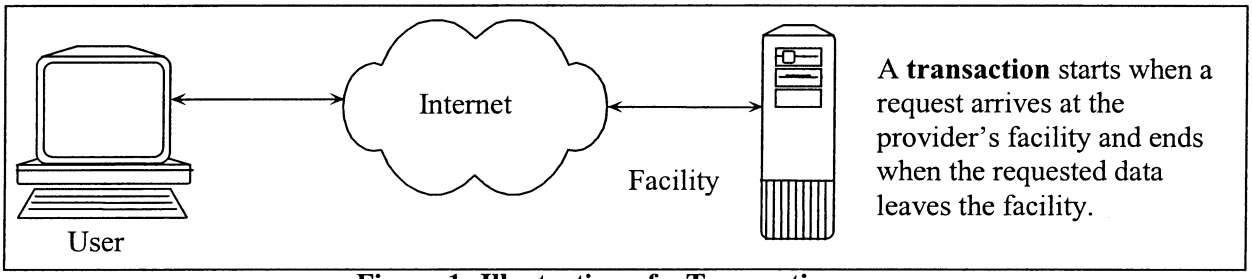

Figure 1: Illustration of a Transaction

c. **Security** means providing Web site authentication and maintaining data integrity. The provider should implement server digital certificate technology consistent with the X.509 certificate standard and Secure Sockets Layer protocol. In addition, the provider should establish and implement security practices to prevent unauthorized access to or modification of provider data, software and hardware.

1) Use of the Public Internet carries certain risks to both QICPs and users. Below are some of the more common risks:

a) The user receives intentionally corrupted data from an invalid source instead of original data from a legitimate source, not detecting the difference. The invalid source captured the original data en route and replaced it with intentionally corrupted data.
b) The user receives forged or fake data that purports to be from a legitimate source but is actually generated by an invalid source.
c) The user gets original data from a legitimate source, but it is inaccurate; it causes a problem in the user's operation and, subsequently, the source denies sending it in order to avoid culpability for the user's loss.

2) A server digital certificate mitigates these risks by providing Web site authentication and two-way data integrity during the transaction between the QICP and the user.

3. RECOMMENDED PRACTICES.

QICPs should consider user authentication (via browser digital certificate or username/password) as needed to determine the identity of the requester. In addition, QICPs should maintain a retrievable archive of Web server log files as well as data received and provided in each transaction for a period of no less than 15 calendar days after the date of that transaction. In the event of receipt of notification of an accident, incident or overdue aircraft, or upon the request of the FAA or the National Transportation Safety Board (NTSB), the provider should retain the data related to that aircraft indefinitely, or until such time that the destruction of the data is authorized by law. The QICP should make this data available in the form of a readable certified true copy upon request of the FAA, the NTSB or a Federal, state or local law enforcement agency.

With the increasing availability of developmental weather products, QICPs are encouraged to clearly identify the operational or experimental status of each product. This may be done by partitioning the Web site, by grouping products or by labeling each individual product. Users are encouraged to require such identification by QICPs.

4. PROCESS FOR QUALIFICATION. To become a QICP, applicants should follow the qualification process described herein.

a. **Steps to Becoming a QICP.**

1) Submit an application certified by a responsible official to ARS-200 containing the following:
   a) Service Description
   b) Security Plan
   c) Capability Demonstration Plan
   d) Ongoing Maintenance Plan

2) Satisfactorily complete the Capability Demonstration.

b. **Attachments to the Letter of Application**

1) **Service Description**: Describes how the applicant intends to accomplish the items in paragraph 2 and (optionally) the recommended practices in paragraph 3. The Service Description should include, but is not limited to, the following items:

   a) Intended user(s) or user class(es), estimated number of users in each user class
   b) Server architecture (i.e., hardware, software)
   c) Network management software
   d) Server digital certificate technology
   e) User authentication (optional)
   f) Archival of Web server log files and transaction data (optional)
   g) Identification of product status as either operational or experimental (optional)

2) **Security Plan**: Describe how the applicant plans to prevent unauthorized access to or modification of applicant's data or facility (e.g., software, hardware, networks, etc.). These practices should include, but are not limited to, the following:

   a) Vulnerability assessments
   b) Risk assessments
   c) Security tests
   d) Disaster recovery and contingency measures

3) **Capability Demonstration Plan:** Describes how the applicant plans to demonstrate that it can or has accomplished the items in paragraph 2 ["General"] and (optionally) the Recommended Practices, usually through a trial period of operations. An alternate demonstration method may be accepted by ARS-200 upon request of the applicant (e.g., documentation of prior Internet site performance). The Demonstration Plan should contain the following:

   a) Primary points of contact for the demonstration
   b) Period of time, including starting and completion dates
   c) Performance statistics to be collected during the demonstration. (Note: These statistics could be collected using the same process as in paragraph 4.b.4)c) below.)
   d) Proposed reporting format

4) **Ongoing Maintenance Plan:** Describes how the applicant plans to adequately maintain its Internet service and operation. This plan should include at least the following:

   a) The names, titles and resumes of responsible personnel, with descriptions of their duties and responsibilities
   b) System maintenance procedures

c) Quality Assurance Plan describing the process to collect and maintain performance statistics for the items in paragraph 2 ["General"] and to provide them to ARS-200 semiannually or upon request

d) Quality of Service (QOS) agreement(s) with each user or user class, specifying the items in paragraph 2 and providing user complaint procedures in the event QICP service and operation are not adequate

c. **Application Review.** Upon receipt of the application, ARS-200 acknowledges receipt, reviews the submission and requests additional information if needed. ARS-200 plans to advise the applicant in writing of its findings within 60 calendar days from receipt. If unable to complete the review within this period, ARS-200 provides the applicant with a revised completion date. If the application package is lacking in some way, ARS-200 returns the submission to the applicant with recommendations for revision. If the application package is sufficient, ARS-200 notifies the applicant to proceed with its capability demonstration.

d. **Capability Demonstration.** Upon receiving notification to proceed, the applicant may demonstrate its Internet performance capability, usually by means of a trial period. During the trial period, the provider's Web site should be fully operational. During and after the trial period, the applicant should report demonstration results to ARS-200 to document satisfactory accomplishment of the items contained in this AC.

e. **Application Disposition**

1) Upon successful completion of the capability demonstration, ARS-200 issues a letter approving the applicant as a QICP for a period of 6 months and adds the applicant's name to the QICP list maintained by ARS-200 on a designated Web page.

2) Should the FAA find the capability demonstration to be insufficient, ARS-200 issues a Letter of Denial, indicating the reasons for the denial. The form and content of any subsequent re-application are defined in the Letter of Denial.

5. ONGOING MAINTENANCE

QICPs should demonstrate ongoing maintenance of QICP status by collecting facility performance statistics and providing them to ARS-200 semiannually or upon request (e.g., following ARS-200 receipt of a user QOS complaint). ARS-200 reviews QICP statistics to verify continued performance maintenance; if verified, ARS-200 retains the provider's name on the QICP list for an additional period of 6 months. If a QICP does not adequately maintain its service and operation, ARS-200 notifies the provider in writing that QICP status may be rescinded unless the provider provides documentation within 30 calendar days that the deficiency has been corrected. If such documentation is not received or is unsatisfactory, ARS-200 may rescind QICP status and remove the provider's name from the QICP list.

QICPs should acknowledge and address user QOS complaints within 14 calendar days of receipt, and forward user QOS complaints to ARS-200 within 30 calendar days of receipt with an explanation of actions taken. ARS-200 and QICPs may collaborate to resolve any identified performance deficiencies. QICP failure to properly process or resolve QOS complaints may result in ARS-200 taking action as described in the preceding paragraph.

6. PAPERWORK REDUCTION ACT STATEMENT. As described in this AC, the FAA collects information contained in initial QICP applications and subsequent QICP reports of semi-annual facility performance statistics, archived data and user complaint corrective actions. The information is collected to enable ARS-200 to process initial QICP applications and determine continued QICP maintenance of its

service and operation for the transmission of aviation weather and NOTAMs via the Internet; collected information may also be used by the FAA, the NTSB or law enforcement agencies following an accident, incident or overdue aircraft. The reporting burden for each QICP is estimated to average 568 hours during the initial year and 274 hours each subsequent year. Information submission is totally voluntary; however, failure to provide the information may result in the denial or loss of QICP status. 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 Office of Management and Budget (OMB) control number. The OMB control number for AC XX is 2120-0672.

7. ADDITIONAL INFORMATION

Questions or comments concerning this AC should be directed to:
FAA, Aerospace Weather Policy Staff (ARS-100)
800 Independence Avenue, SW
Washington, DC 20591
(202) 385-7704

APPENDIX 1. DEFINITIONS OF TERMS

This appendix contains definitions of terms used throughout this AC.

Browser Digital Certificate	Electronic equivalent of an ID card obtained employing digital certificate technology and installed on a user's browser—used in conjunction with a public key encryption system to automatically authenticate the user's identity.
Facility	All hardware, software and Internet connectivity under the provider's direct control.
Log File	A Web server file containing access information regarding the activity on that server.
NOTAM	Aeronautical information that could affect a pilot's decision to make a flight. It includes such information as airport or primary runway closures, changes in the status of navigational aids, radar service availability, and other information essential to planned en route, terminal or landing operations. It can also contain mandatory emergency air traffic rules issued pursuant to the Code of Federal Regulations, Title 14, Section 91.139.
Provider	A person or organization (including a government agency) which supplies aviation weather and NOTAMs to a civil aviation user.
Public Internet	Any and/or all of the Internet sites that are accessible by any Internet connection. A distinguishing feature is its use of a set of protocols called TCP/IP (Transmission Control Protocol/Internet Protocol).
Secure Sockets Layer Protocol	A security protocol that provides Web site authentication, message integrity and message privacy over the Internet—allows provider/user applications to communicate while preventing message forgery, tampering and eavesdropping.
Server Digital Certificate	Electronic equivalent of an ID card obtained employing digital certificate technology and installed on a Web site server—used in conjunction with a public key encryption system to automatically authenticate the Web site's identity and ensure two-way data integrity during a transaction.
Transaction	All data exchanged between the user and provider beginning when the user's request arrives at the provider's facility and ending when the requested data leaves the facility.
User	A person or organization that requests and receives aviation weather and NOTAMs from a provider.
User Authentication	Technique by which access to Web site resources requires a user to have a browser digital certificate or to enter a username and password as identification.
Web Site Authentication	Technique by which access to Web site resources requires a server digital certificate as identification.
X.509 Certificate Standard	An Internet industry standard that defines what information can go into a digital certificate and describes the information format.

[FR Doc. 02–861 Filed 1–11–02; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2002, Through December 31, 2002

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2002, through December 31, 2002, will remain at 25 percent of covered aviation employees for random drug testing and 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold N. Schwartz, Office of Aerospace Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5970.

Discussion: The FAA Administrator set the minimum random drug testing rate for 2002 at 25 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. The FAA Administrator set the minimum alcohol testing rate for 2002 at 10 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 0.5 percent.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random drug and alcohol percentage testing rates are determined please refer to the Code of Federal Regulations Title 14: part 121, Appendices I and J.

Dated: January 8, 2002.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 02–864 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pilot Program To Permit Cost-Sharing of Air Traffic Modernization Projects

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of program guidance for air traffic modernization cost-sharing pilot program for fiscal years 2002 and 2003.

SUMMARY: On December 6, 2000, the FAA issued proposed program guidance on Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21), which authorizes a pilot program for cost-sharing of air traffic modernization projects. The initial program was for fiscal years 2001, 2002, and 2003. The FAA is now issuing updated program guidance based upon the lessons learned from the first year of program implementation and is requesting sponsors' expressions of interest for cost-sharing projects for fiscal years 2002 and 2003. The purpose of section 304 is to improve aviation safety and enhance mobility by encouraging non-Federal investment on a pilot-program basis in air traffic control facilities and equipment. Under the pilot program, the Secretary of Transportation may make grants to eligible project sponsors for not more than ten eligible projects. Each eligible project is limited to Federal funding as highlighted in section 2.3.1 with the Federal cost share not to exceed 33 percent of the project's facilities and equipment (excluding operations and maintenance) cost. A project sponsor may be a public-use airport (or a group of public-use airports), or a joint venture between a public-use airport (or a group of public-use airports) and one or more U.S. air carriers.

DATES: The FAA's Air Traffic System Requirements Service should receive initial sponsors' expressions of interest on/or before February 8, 2002. Failure to meet the proposal submission deadline will not result in automatic disqualification, but may cause disapproval due to decisions made by the FAA on proposals in hand when Phase 1 deliberations are made. Potential sponsors are encouraged to submit proposals as soon as possible.

ADDRESSES: Sponsors' expressions of interest/proposal should be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of Aviation Policy and Plans (Attention: APO–200), 800 Independence Ave SW., Washington, DC 20590. Electronic submissions will be accepted for Phase 1 expression of interest/proposal, but must be followed up with a signed paper copy within five working days, to the address listed above. The Phase 1 electronic submissions should be mailed to *Debra.Griffith@faa.gov.* Electronic submissions for Phase 2 formal application will not be accepted. Deliveries may be made between 8:30 am and 5 pm weekdays, except Federal holidays.

An electronic copy of this notice may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

FOR FURTHER INFORMATION CONTACT: Debra Griffith or Joann Kansier (202–385–7600), Research and Requirements Development Directorate (ARQ), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

1. Background

In performing its mission of providing a safe and efficient air transportation system, the FAA operates and maintains a complex air traffic control system infrastructure. Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21) authorizes a pilot program to permit cost-sharing of air traffic modernization projects, under which airports and airport/airline joint ventures may procure and install facilities and equipment in cooperation with the FAA. The purpose of Section 304 is to establish a pilot program, to improve aviation safety and enhance mobility in the air transportation system by encouraging non-Federal investment in air traffic control facilities and equipment. The pilot program is intended to allow project sponsors to achieve accelerated deployment of eligible facilities or equipment, and to help expand aviation infrastructure.

1.1 Program Participants in Selection Cycle—Round One

The following airport/Projects were selected to participate in round one of the AIR–21 Cost Share Pilot Program:

- Tampa International Airport—upgrade RW18L ILS to Cat II/III
- Minneapolis-St Paul International Airport—ALSFs on RW12L and 12R
- Chicago O'Hare International Airport—develop surface movement management system based on multilateration technology
- John F. Kennedy Airport—feasibility study and environmental issues analysis for RW22R and La Guardia Airport RW22/RW 13 ILS upgrades; La Guardia RW31 Glideslope
- Olive Branch Airport, Mississippi—construct Air Traffic Control Tower

The average FAA share for a round one project is $1.5 million. The FAA is authorized to approve five more projects under Section 304 of AIR–21. Those

sponsors whose projects were approved in the first round may submit additional proposals expanding upon their initial projects. All proposals that were not accepted during the FY 01 consideration will be reconsidered upon a written request from the sponsor. All sponsors who anticipate resubmitting last year's request should review the updated criteria in sections 2.1 and 2.2 before submission and modify the proposal as appropriate. Sponsors may submit additional proposals if they desire or update their original proposal.

2. Final Program Guidance

This section restates, in part, the statutory language of AIR–21 Section 304 and outlines FAA's supplementary criteria for the pilot program. The sponsor eligibility, project eligibility, and evaluation and screening criteria are outlined in Sections 2.1, 2.2 and 2.6 respectively of this notice.

2.1 Eligible Project Sponsors

2.1.1 Statutory Provisions for Sponsor Eligibility

The term 'project sponsor' means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

2.1.2 Supplementary FAA Criteria for Sponsor Eligibility

An eligible project sponsor is a public-use airport (or group of airports), either publicly or privately owned, action on its own or in a joint venture with one or more U.S. air carriers. All landing facilities meeting these criteria are eligible, including but not limited to commercial service airports, reliever airports, general aviation airports, heliports, etc. All eligible sponsors are encouraged to participate. If selected for the pilot program, the sponsor must be willing to enter into a Memorandum of Agreement with the FAA outlining the specific goals to be accomplished, the roles and responsibilities of each party, schedule milestones, and funding contributions of the parties. An eligible sponsor must have an available source of funds to execute the pilot program.

2.2 Eligible Projects

2.2.1 Statutory Provisions for Project Eligibility

The term 'eligible project' means a project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include:

a. Airport-specific air traffic facilities and equipment, including local area augmentation systems,* instrument lands systems, weather and wind shear detection equipment, lighting improvements, and control towers

b. Automation tools to effect improvements in airport capacity, including passive final approach spacing tools* and traffic management advisory equipment; and

c. Facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

* Note these projects will be eligible, assuming availability and viability of the equipment with the time limitation highlighted in 2.2.2.b.

2.2.2 Supplementary FAA Criteria for Project Eligibility

a. The project should be consistent with FAA's air traffic equipment/systems infrastructure and architecture and should be a validated project of a FAA program. The project, when commissioned, should provide measurable benefits that benefit regional or local objectives/interests and the FAA NAS.

b. The project shall be initiated within two years of project approval and completed/commissioned within five years of project approval (allowing for an environmental impact study (if necessary), acquisition, supply support, training programs, etc.).

c. Equipment and facilities should meet applicable FAA advisory circulars and specifications.

d. The project should serve the general welfare of the flying public; it should not be used for the exclusive interest of a for-profit entity.

e. Any facility/equipment acquired under the project should be a new asset, not an asset that the sponsor has already acquired or committed to acquiring.

f. The project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life.

g. The cost-share program is not the correct forum for requesting development of RNAV procedures.

h. A sponsor may submit a multiple component project (as outlined in paragraph 2.5) where each component forms part or all of an integrated system. The FAA reserves the option to accept one or multiple components of a proposal.

i. A project may not be co-mingled with other FAA cost-sharing programs (e.g., the provisions of AIR–21 Section 131 that authorize cost-sharing programs for airport traffic control tower operations and construction).

j. All equipment and structures should meet appropriate OSHA standards for employee safety and fire protection. Where land is involved, the property should meet all environmental compliance requirements, including noise, hazardous material, property access, and zoning rights.

k. A project should not increase the controller or airways facility workforces during the pre-transfer period (see section 2.4 below titled ''Transfer of Facility or Equipment to FAA'').

2.3 Funding

2.3.1 Statutory Provisions for Funding

The Federal share of the cost of an eligible project carried out under the pilot program shall not exceed 33 percent. No project may receive more than $15,000,000 in Federal funding under Section 48101(a) of Title 49, United State Code (FAA's Facilities and Equipment appropriation). The Secretary shall use amounts appropriated under Section 48101(a) for fiscal years 2001 through 2003 to carry out the program.

The sponsor's non-Federal share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to Section 40117 of Title 49, United States Code (passenger facility charges).

2.3.2 Supplementary FAA Criteria for Funding

FAA is not obligated to fund one-third of the total project costs; rather, FAA's share may not exceed this threshold. The project sponsor must provide two-thirds or more of the total project cost. The Federal and non-Federal shares of project cost may take the form of in-kind contributions. Equipment in FAA's inventory that has not been previously deployed qualifies as eligible equipment. If selected for the pilot program, a sponsor may use passenger facility charge (PFC) revenues to acquire and install eligible facilities and equipment, but not to fund their operation or maintenance. Normal PFC processing procedures under Federal Aviation Regulation 14 CFR Part 158 will be used to approve the imposition of a PFC or the use of PFC revenue as the non-Federal share of a pilot program project.

Project funding may be effected through a grant, a cooperative agreement, or other applicable instrument. Federal contributions applied to any other Federal project or grant may not be used to satisfy the sponsor's cost share under this pilot program.

The following criteria apply to the calculation of the cost-sharing ratio:

a. Project are limited to those costs that the FAA would normally incur in conventional facilities and equipment funding (e.g., if land/right-of-way must be acquired or leased for a project, its cost can be included in the cost-sharing ratio only if FAA would otherwise incur it in conventional program funding).

b. Operations and maintenance costs of the project, both before and after any sponsor-elected project transfer to the FAA, will not be considered as part of the cost-share contribution.

c. Non-federal funding may include cash, substantial equipment contributions that are wholly utilized as an integral part of the project, and personnel services dedicated to the proposed project prior to commissioning, as long as such personnel are not otherwise supported with Federal funds. The non-federal cost may include in-kind contributions (e.g., buildings). In-kind contributions will be evaluated as to whether they present a cost that FAA would otherwise incur in conventional facilities and equipment funding.

d. Aside from in-kind contributions, only funds expended by the sponsor after the project approval date will be eligible for inclusion in the cost-sharing ratio.

e. Unless otherwise specified by these criteria, the principles and standards for determining costs should be conducted in accordance with OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments.*

f. As with other U.S. DOT cost-sharing grants, it is inappropriate for a management/administrative fee to be included as part of the sponsor's contribution. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to support the project.

By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. FAA funding decisions will be made in concert with the project evaluation and project selection processes discussed later in this notice. FAA may choose to use specifically appropriated funds, to re-program funds from within existing facilities and equipment project appropriations, or to fund from within existing budget line items.

Unless otherwise stipulated in the agreement executed between the sponsor and the FAA, liability for cost over-runs will be shared between the FAA and the sponsor in accordance with their project cost shares.

The U.S. Department of Transportation and the Comptroller General of the United States have the right to obtain and assess all documents pertaining to the use of Federal and non-Federal contributions for selected projects. Sponsors should maintain sufficient documentation during negotiations and during the life of the project to substantiate costs.

2.4 Transfer of Facility or Equipment to FAA

2.4.1 Statutory Provisions for Facility or Equipment Transfer

Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the FAA, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The FAA shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the FAA in accordance with criteria of the FAA.

2.4.2 Supplementary FAA Criteria for Facility or Equipment Transfer

Project transfers to the FAA will be at the sponsor's election and in accordance with the criteria listed below.

a. At the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect.

b. In the event of transfer, software code, data rights, and support tools should be provided to the FAA at no cost to the FAA.

If the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

2.5 Application Procedures

The following application procedures will be used when applying for the cost-share:

a. Application to the pilot program consists of two phases, as described below. The purpose of Phase 1 is to allow the FAA to gauge the level of interest, to provide preliminary responses to potential sponsors to avoid causing applicant sponsors to expend excessive resources on project applications that have very limited changes of acceptance because of need or cost, and to plan for subsequent program implementation. In Phase 1 the FAA will review the application based upon its individual merit.

b. The purpose of Phase 2 project review is to conduct comparative analysis of the individual applications accepted during Phase 1. In Phase 2, sponsors will provide more detailed applications, and final FAA evaluations/project selections will be completed.

c. Airport sponsors may submit multiple projects and projects with multiple components, but each piece of equipment/activity must be identified and costed separately and should be listed in priority order. An example of a multiple component project would be an instrument landing system (ILS) project that may include in addition to the ILS equipment, middle markers and runway lighting for a complete package. The FAA reserves the option to accept one or multiple pieces of each proposal.

d. Projects that would be good candidates for this program may include equipment and systems that monitor weather, support runway incursion reduction, and support regional interest.

e. Under this pilot program, either the FAA or the sponsor may acquire and/or install facilities or equipment. In the case where the FAA manages the procurement, existing FAA contracts will be used where possible.

f. Proposals for new air traffic control towers will only be considered if they enhance the National Airspace System. Per FAA Order 6030.1, FAA Policy on Relocation, movement of an existing air traffic control tower for the convenience/benefit of only the airport will not be considered. Requests for towers will be considered utilizing the criteria in Order 7031.2C, Airway Planning Standards Number One (APS–1).

2.5.1 Phase 1: Sponsor's Submission of Proposal and Initial Project Review

Proposal packages should be no more than 20 pages in length. Although not binding the Phase 1 submission should reflect accurate estimates of project cost and sponsor contributions. The FAA may verify with the sponsor the cost estimate if it does not appear to be consistent with the FAA's estimate, and thus provide the sponsor time to revalidate its proposal before Phase 2. Sponsors should submit written expressions of interest in accordance with the sections captioned **DATES** and **ADDRESSES** provided earlier in this notice. A sponsor's initial proposal should include the following:

a. Identity of sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures.

b. Description and location of the proposed project.

c. Statement of need for the project, including an assessment of the projected benefits—site-specific, regional, and the national airspace systems. Preferred project schedule, including start date, completion date, and any significant interim milestone dates.

d. Statement of intent to transfer the project to the FAA, including envisioned date, or intent not to transfer the project to the FAA.

e. Schedule of estimated project costs, including: (1) Up-front costs divided into proposed shares between the sponsor and the FAA, and (2) annual and life-cycle operations and maintenance costs (both before and after transfer if the sponsor elects to transfer the project to the FAA). Cost should be outlined separately for each major activity (e.g., each ILS).

f. Self-assessment of the ability to acquire and commit the non-Federal share of funding.

g. Brief description of sponsor's internal approval/coordination process for establishing a formal cost-sharing agreement with the FAA and the estimated time-frame for completion.

h. If requesting establishment of an air traffic control tower, sponsor must indicate how the facility is to be staffed. Acceptance for the Cost Share Pilot Program does not automatically qualify an airport for the FAA contract tower program to staff the tower with contract air traffic controllers.

The FAA will review and evaluate the expressions of interest submitted during Phase 1, using a panel of technical experts and senior managers. The panel will review the submission considering the technical feasibility, program feasibility, schedule, projected operational benefits, and cost. The FAA will contact the sponsor if it has questions or has suggestions on how the sponsor may improve its proposal. Following its evaluations and preliminary selections, the review panel will recommend to the Director of FAA's Airway Facilities Service and the Director of FAA's Office of System Architecture and Investment Analysis those applicant sponsors who should be invited to participate in Phase 2, as described below. These officials will notify and invite selected sponsors to participate in Phase 2. Following Phase 1, the FAA may conduct on-site visits to work with the sponsor in order to have a dialogue on the proposal before Phase 2 submission.

2.5.2 Phase 2: Formal Application and Selection of Projects

Only proposals that have been reviewed in Phase 1 will be considered during Phase 2. Phase 2 proposals should not be more than twenty pages in length. During Phase 2 each sponsor that has been invited to participate should submit an expanded application with the following elements needed by the FAA to evaluate the merits of each application.

a. *Project Description:* The project description should contain: (1) The identity of the submitting sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures; (2) project name and location; (3) a detailed project description.

b. *Projected Benefits:* All applications should describe the need for the project and demonstrate its safety, efficiency, capacity, productivity, and other benefits, as applicable, at the airport, regional, and system-wide levels. The sponsor may conduct its own analysis, may opt to summarize existing analyses from FAA's acquisition management system, and/or may use the investment criteria in FAA Order 7031.2C, Airway Planning Standard Number One.

c. *Economic Analysis:* Supporting the projected benefits review the applicant should conduct an economic analysis. The analysis should include a schedule of project costs, including: (1) Up-front costs broken down into proposed shares between the sponsor and the FAA; and (2) annual and life-cycle operations and maintenance costs before and after transfer to the FAA (if the sponsor elects to transfer). The level of effort devoted to the analyses should be tailored to the scope and cost of the project. For complex programs FAA guidance can be found in Report FAA–APO–98–4, *Economic Analysis of Investment and Regulatory Programs—Revised Guide,* and Report FAA–APO–98–8, *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*

d. *Schedule:* The Schedule should list all significant proposed project dates, including the start date, completion date, date of project transfer of the FAA (if applicable), and key interim milestone dates.

e. *Financial Plan:* The Financial Plan should contain: (1) The proposed local and Federal cost shares, (2) evidence of the sponsor's ability to provide funds for its cost share (e.g., approved local appropriation or Memorandum of Agreement); and (3) any commitment the sponsor might choose to offer for the assumption and liability of cost overruns aside from the liability criterion provided earlier in this notice.

f. *Letter of Commitment:* Sponsors should demonstrate a commitment to the project, as evidenced by a Letter of Commitment signed by all project participants (including any participating air carriers). The letter should, at a minimum, include a list of the participating agencies and organizations in the proposed project; the roles, responsibilities and relationship of each participant; and the name, address, and telephone number of the individual representing the sponsor.

g. *Letter of Acknowledgment/Support:* The application will include a letter of acknowledgment/support from the applicable State Department of Transportation and/or other appropriate jurisdiction (to avoid circumventing State and metropolitan planning processes). It is the intent of FAA Headquarters for the appropriate projects to include the FAA's Regional Office in the project review cycle. It would be in the best interest of the applicant to pre-coordinate the projects with the appropriate FAA Regional Office.

The FAA will review and evaluate the Phase 2 applications using a panel of technical program experts and senior managers based on the criteria outlined below in Section 2.6. Following its evaluations, the review panel will prioritize and recommend to the FAA's Associate Administrator for Air Traffic Services and the Associate Administrator for Research and Acquisition those applications that it believes should be accepted. If the FAA selects a project for inclusion in the pilot program, an agreement will be executed between the sponsor and the FAA.

2.5.3 Subsequent Application and Selection Cycles

If fewer than the statutorily-limited ten projects have been approved following the second round of Phase 1 and 2 applications, FAA will repeat the Phase 1 and 2 application processes, until the earlier of: May 15, 2003, or that point in time when the ten project limit is reached (see Schedule Summary in Section 2.7 below). The May 15, 2002, cutoff date is based on an allowance of time for FAA to process Phase 2 applications and make selections prior to the statutory authorization expiring at the end of fiscal year 2003. FAA cannot and does not extend any assurance or implication that any residual authority will remain following the first round of Phase 1 and 2 applications.

2.6 Application Evaluation and Screening Criteria

During Phase 1 the FAA will review each of the applications based upon the individual merit of the application. The FAA will consider the following elements in evaluating Phase 1 applications:

a. Compliance with statutory criteria, FAA's supplemental criteria, and application procedures.

b. Degree to which the project provides benefits to support the FAA's strategic goals for safety, efficiency, and mobility, as well as the national airspace system architecture.

c. Likelihood of project success.

d. Ability of sponsor to provide its cost share.

The Phase II review involves a comparative analysis of the individual applications to each other. Phase II application evaluation will include the following additional elements in evaluating the applications.

a. Benefit to the airport, region, and national airspace system.

b. Ease of administration (acquisition, installation, etc.).

c. Evidence that the project can be implemented in accordance with the proposed schedule.

d. Availability of FAA resources.

e. Degree of Federal leveraging (degree to which the proposal minimizes the ratio of Federal costs to total project costs).

f. Cost to the FAA: (1) up-front cost-share (a sponsor's willingness to pay a higher percentage of the project will increase its competitiveness when compared to other projects; and, if applicable, (2) post-transfer life-cycle operating and maintenance costs.

g. Equity and diversity with respect to project type, geography, and population served.

2.7 Schedule Summary

Milestone	Date
Second-Round of Applications	
Phase 1 Applications due to FAA	2/21/02
FAA Responses to Sponsors' Phase 1 Applications	4/22/02
Phase 2 Applications due to FAA	6/3/02
FAA Announcement of Second-Round Approvals	9/3/02
Third-Round of Applications (if needed)	
Phase 1 Applications due to FAA	12/13/2002
FAA Responses to Sponsors' Phase 1 Applications	2/14/2003
Phase 2 Applications due to FAA	5/15/2003
FAA Announcement of Third-Round Approvals	7/15/2003

2.8 Project Implementation Information

During the life of the project, the FAA may collect data from the sponsor and conduct (with non-project funds) independent evaluations of the project's impact on safety, efficiency, and mobility objectives. This will allow the FAA to ascertain the success of the pilot program. The selection of projects is currently limited by AIR–21 to the end of the fiscal year 2003.

3. Impact of Revised Guidelines

Potential costs and benefits of the final guidelines have been reviewed consistent with the intent of Executive Order 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act of 1980, Executive Order 13132 (Federalism), Office of the Secretary of Transportation direction on evaluation of international trade impacts, and the Unfunded Mandates Reform Act of 1995. The rationale for compliance with these guidelines was provided in the **Federal Register** notice dated December 6, 2000 which remains unchanged and can be found in that **Federal Register** or is available from the FAA office listed in the **ADDRESSES** section of this announcement.

4. References

The following list outlines references cited above:

OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments,* revised August 29, 1997.

Report FAA–APO–98–4, *Economic Analysis of Investment and Regulatory Programs—Revised Guide.* Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm.*

Report FAA–APO–98–8, *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs.* Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm.*

FAA Order 6030.1, *FAA Policy on Relocation.* Available upon request from the FAA, telephone 202–646–2310.

FAA Order 7031.2C, *Airway Planning Standard Number One,* through Change.

12. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308.

FAA Order 6700.20, *Non–Federal Navigational Aids and Air Traffic Control Facilities.* Available upon request from the FAA's NAS Operations Program Office, telephone 202–267–3034.

Issued in Washington, DC, on January 9, 2002.

Joann Kansier,

Program Director for Research and Requirements Development, ARQ–1.

[FR Doc. 02–863 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Trinity County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA), as lead agency, in cooperation with the Trinity County Department of Transportation (TCDOT) and the California Department of Transportation (CALTRANS), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA). This is based on a proposal by TCDOT to construct a local connector roadway project providing residents with local connections to existing County roads and minimizing the travel dependency on SR–299 through Weaverville. FHWA intends to process an EIS for this project.

DATES AND ADDRESSES: To ensure that the full range of issues related to the proposed improvements are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. *Written comments* or *questions* concerning the proposed action and the EIS should be directed to FHWA and/or TCDOT at the addresses provided below. Written comments on the scope of alternatives and impacts to be considered should be submitted not later than thirty (30) calendar days from the date of this publication. *Scoping Meeting:* A public scoping meeting was held November 14, 2001 and a subsequent scoping meeting may be offered to *agencies* on request. The public has been notified through local newspapers, postings in public places, and through other public notification methods.

FOR FURTHER INFORMATION CONTACT: R.C. Slovensky, Federal Highway Administration (FHWA), 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724, (916) 498–5774, or fax (916) 498–5008 and/or Jan Smith, TCDOT, PO. Box 2490, Weaverville, CA 96093–2490 (530) 623–1365, or fax (530) 623–5312.

SUPPLEMENTARY INFORMATION: The proposed new roadway, beginning at or near the intersection of Industrial Park Road and State Route (SR)–299, southeast of the community of Weaverville, and intersecting with SR–299 approximately 2 miles northwest of the community of Weaverville, is intended to provide residents with local connections to existing County roads, minimizing the travel dependency on SR–299 and providing an alternative means of travelling in and around Weaverville. Accordingly, the project will reduce traffic congestion and delays along SR–299 through the historic district in downtown Weaverville and at key intersections with SR–3 and Washington Street. The project involves construction of a new two-lane undivided arterial roadway with 12-foot lanes (3.6m) and 4-foot (1.2m) paved shoulders on both sides that will accommodate bicycle traffic. The project will have a 55 mph design speed for Design Hourly (traffic) Volume projected for Year 2030. Up to six existing residential County roads may be connected to the proposed West Connector. A total of three alternative alignments will be examined initially, although other alignments or alignment configurations may be considered. Depending on the ultimate project alignment and configuration, the total project length will vary from 3.1 miles (5.0k) to 4.0 miles (6.4k), including up to 4 stream crossings. Alternative connecting designs for the western project terminus include a grade-separated interchange, and an at-grade ''T'' intersection.

Issues to be addressed in the EIS include socioeconomic issues related to noise and safety, impacts on the rural character of affected neighborhoods, and effects on downtown business. Cultural resources associated with historic mining activities are present in the project area. Elements of a proposed trail system follow the same alignments as the West Connector, and coordination with the Weaverville Basin Trails Committee will be required to resolve any conflicts. The east end of the alignment will traverse a Natural Resources Conservation Service Wetland Reserve Easement through a corridor dedicated for the West Connector. The project will involve construction activities within and adjacent to West Weaver Creek, which is potential habitat for State and Federally listed fish, amphibians, birds, and other wildlife species.

Issued on January 8, 2002.

R.C. Slovensky,

Senior Transportation Engineer, District Operations-North—California Division, Federal Highway Administration.

[FR Doc. 02–850 Filed 1–11–02; 8:45 am]

BILLING CODE 34910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 7, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Departmental Offices/Office of Procurement

OMB Number: 1505–0080.
Form Number: None.
Type of Review: Extension.
Title: Post-Contract Award Information.
Description: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protect the Government's interest.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 5,023.
Estimated Burden Hours Per Respondent: 14 hours, 46 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 70,493 hours.

OMB Number: 1505–0081.
Form Number: None.
Type of Review: Extension.
Title: Solicitation of Proposal Information for Award of Public Contracts.
Description: Information requested of offerors is specific to each procurement solicitation, and is required to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 26,338.
Estimated Burden Hours Per Respondent: 31 hours, 2 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 776,561 hours.

OMB Number: 1505–0107.
Form Number: None.
Type of Review: Extension.
Title: Regulation on Agency Protests.
Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 17.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 34 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–874 Filed 1–11–02; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 4, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Type of Review: Extension.

Title: Schedule of Excess Risks.

Description: Listing of Excess Risks written or assumed by Treasury Certified Companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of Certified companies for the benefit of writing Federal surety bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 296.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 5,920 hours.

OMB Number: 1510–0027.

Form Number: POD 1681.

Type of Review: Extension.

Title: Application for Payment of a Deceased Depositor's Postal Savings Certificate.

Description: This form is used when an application is submitted for payment of a deceased Postal Savings depositor's account. Information furnished on the form is used to determine if the applicant is entitled to the proceeds of the account.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1510–0035.

Form Number: None.

Type of Review: Extension.

Title: Assignment Form.

Description: This form is used when an awardholder wants to assign or transfer all or part of his/her award to another person. When this occurs, the awardholder forfeits all future rights to the portion assigned.

Respondents: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 75 hours.

OMB Number: 1510–0047.

Form Number: TFS 2211.

Type of Review: Extension.

Title: List of Data (A) and List of Data (B).

Description: Information collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or recognition as an Admitted Reinsurer (except or excess risks running to the United States).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 18 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 540 hours.

OMB Number: 1510–0052.

Form Number: FMS 458 and FMS 459.

Type of Review: Extension.

Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary and Resolution.

Description: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury and Loan Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (Once for duration of the authorization).

Estimated Total Reporting Burden: 225 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–875 Filed 1–11–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 31, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1634.

Regulation Project Number: REG–106902–98 Final.

Type of Review: Extension.

Title: Consolidated Returns—Consolidated Over Foreign Losses and Separate Limitation Losses.

Description: The regulations provide guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1640.

Regulation Project Number: REG–104924–98 NPRM.

Type of Review: Extension.

Title: Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.

Description: The collection of information in this proposed regulation by the Internal Revenue Service to determine whether an exemption from market-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are business or other-for-profit institution.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Recordkeeping Burden: 1,000 hour.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–876 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–10, Procedures for IRAs, SEPs, and SIMPLEs IRA Plans.

DATES: Written comments should be received on or before March 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedures for IRAs, SEPs, and SIMPLEs IRA Plans.

OMB Number: 1545–1769.

Revenue Procedure Number: Revenue Procedure 2002–10.

Abstract: The Economic Growth and Tax Relief Reconciliation Act of 2001 made numerous changes affecting IRAs, SEPs, and simples IRA plans. These changes are effective beginning January 1, 2002, and to take advantage off the new law, these retirement plans must be amended and participants notified of the amendments. Revenue Procedure 2002–10 provides guidance on this process and provides an extended period for making the amendments.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions and farms.

Estimated Number of Respondents: 378,000.

Estimated Average Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 7,371,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–895 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 601.201]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, 26 CFR 601.201, Instructions for Requesting Rulings and Determination Letters.

DATES: Written comments should be received on or before March 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue

Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Instructions for Requesting Rulings and Determination Letters.

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Abstract: The IRS issues rulings letters and determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The procedural regulations set forth the instructions for requesting ruling and determination letters.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: All taxpayers.

Estimated Number of Respondents: 271,914.

Estimated Time Per Respondent: The estimated annual burden per respondent various from 15 minutes to 1 hour, depending on individual circumstances, with an estimated of 55 minutes.

Estimated Total Annual Burden Hours: 248,496.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–897 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 9
Monday, January 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–01–006]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's view, based on a review by the Agricultural Marketing Service (AMS), that it is not necessary to conduct a referendum among producers and importers on continuation of the 1990 amendments to the Cotton Research and Promotion Act (Act). The 1990 amendments require the Secretary of Agriculture, once every five years, to conduct a review to determine whether to hold a referendum. The two major changes to the Cotton Research and Promotion Program made by the 1990 amendments were the elimination of assessment refunds to producers and a new assessment levied on imported cotton and the cotton content of imported products. Although USDA is of the view that a referendum is not needed, it will initiate a sign-up period as required by the Act, to allow cotton producers and importers to request a referendum.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Cotton Research and Promotion Staff, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224, Telephone (202) 720–2259, Facsimile (202) 690–1718 or e-mail *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION: In July 1991, the Agricultural Marketing Service (AMS) implemented the 1990 amendments to the Cotton Research and Promotion Act (Act). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons to be determined by the Secretary who import cotton or cotton products into the United States (U.S.) and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary of Agriculture; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

Results of the July 1991 referendum showed that of the 46,220 valid ballots received; 27,879 or 60 percent of the persons voting, favored the amendments to the Cotton Research and Promotion Order (Order), and 18,341 or 40 percent opposed the amendments. AMS developed implementing regulations for the import assessment effective August 1, 1992, the elimination of the producer refund effective September 1, 1991, and provided for importer representation on the Cotton Board effective January 1, 1993. The addition of these new members brought the Cotton Board's membership to 25 (21 producer members and 4 importer members).

On October 8, 1996, USDA issued the results of the first five-year review of the Cotton Research and Promotion Program. USDA announced its view not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772). During the period of January 15 through April 14, 1997, the Department conducted a sign-up period for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of the sign-up period did not meet the criteria as established by the Act for a continuance and therefore, a referendum was not conducted.

The Department has prepared a second report that describes the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those receiving its benefits. The report is based on a review conducted by AMS to determine whether to hold a referendum of producers and importers on the continuation of the 1990 Act amendments. The review report is available upon written request to the Chief of the Cotton Research and Promotion Staff at the address provided above. Comments were solicited from all interested parties including from persons who pay the assessments as well as from organizations representing cotton producers and importers (66 FR 16440; March 26, 2001). Economic data was also reviewed in order to report on the general climate of the cotton industry. Finally, a number of independent sources of information were reviewed to help identify perspectives from outside the program including the results of independent program evaluations assessing the effects of the Cotton Research and Promotion Program activities on demand for Upland cotton, return-on-investment to cotton producers, the net value to companies who import cotton products and raw cotton, and the overall rate-of-return and qualitative benefits and returns associated with the Cotton Research and Promotion Program.

The review report cited that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a general consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from two independent evaluations support this conclusion. Industry comments cited examples of how the additional funding has yielded benefits by increasing the demand and consumption for cotton.

USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Cotton Research and Promotion Order although some program participants support a referendum. Therefore, USDA will allow all eligible persons to request the conduct of a continuance referendum on the 1990 amendments through a sign-up period. Eligible producers and importers may sign-up to request such a referendum at the county office of the Farm Service Agency (FSA), or by mailing such a request to FSA. The Secretary will conduct a referendum if requested by 10 percent (4,622) or more

of the number of cotton producers and importers voting in the most recent referendum (July 1991), with not more than 20 percent of such request from producers in one state or importers of cotton.

Currently, procedures for the conduct of a sign-up period appear at 7 CFR 1205.10–1205.30. These procedures will be updated as appropriate prior to the beginning of the sign-up period.

Authority: 7 U.S.C. 2101–2118.

Dated: January 9, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–910 Filed 1–10–02; 8:54 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Publication of Depreciation Rates

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the depreciation rates for telecommunications plant for the period ending December 31, 2000.

DATES: These rates are effective for the period beginning January 1, 1999 and ending December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: Section 206(a)(3) of the Rural Electrification Act of 1936 requires RUS to annually determine and publish average depreciation rates used by its borrowers for the purposes of depreciating telecommunications plant. The following chart provides those rates, compiled by RUS, for the reporting period ended December 31, 2000:

AVERAGE DEPRECIATION RATES OF RUS BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDED DECEMBER 31, 2000

Telecommunications plant category	Depreciation rate (percent)
1. Land and Support Assets	
a. Motor vehicles	15.00
b. Aircraft	10.00

AVERAGE DEPRECIATION RATES OF RUS BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDED DECEMBER 31, 2000—Continued

Telecommunications plant category	Depreciation rate (percent)
c. Special purpose vehicles	12.00
d. Garage and other work equipment	10.00
e. Buildings	3.01
f. Furniture and office equipment	10.00
g. General purpose computers	18.57
2. Central Office Switching	
a. Digital (a)	8.33
b. Analog & electro-mechanical	10.00
c. Operator systems	8.61
d. Radio systems	9.40
e. Circuit equipment (b)	10.00
3. Information Origination/Termination	
a. Station apparatus	11.90
b. Customer premises equipment	10.00
c. Large private branch exchanges	12.50
d. Public telephone terminal equipment	11.00
e. Other terminal equipment	10.00
4. Cable and Wire Facilities	
a. Aerial cable-Poles	6.50
a. Aerial cable-metal	6.00
b. Aerial cable-fiber	5.00
c. Underground cable-metal	4.96
d. Underground cable-fiber	5.00
e. Buried cable-metal	5.00
f. Buried cable-fiber	5.00
g. Conduit systems	3.00
h. Other	7.12

Dated: January 8, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–878 Filed 1–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: On August 8, 2001, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy (66 FR 41517). This review covers one manufacturer/exporter of the subject merchandise (Acciai Speciali Terni, S.p.A. (''AST'')). The period of review (''POR'') is January 4, 1999, through June 30, 2000. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0165.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On August 8, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 41517 (August 8, 2001). In response to the Department's invitation to comment on the preliminary results of this review, AST and petitioners filed their case briefs on September 17, 2001, and their rebuttal briefs on October 1, 2001. AST and petitioners, Allegheny Ludlum Corporation, AK Steel Corporation, J&L Speciality Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc., submitted requests for a hearing on September 17, 2001. On October 4,

2001, AST and petitioners withdrew their request for a hearing. On November 29, 2001, the Department extended the final results of review by 30 days. *See Notice of Extension of the Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 66 FR 59568 (November 29, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Period of Review

The POR is January 4, 1999 to June 30, 2000.

Scope of Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils (''SSSS''). Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36''' is a trademark of Imphy, S.A.

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' [6] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' [7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 7, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation:

- We recalculated home market imputed credit expenses based on the weighted average of the revised short-term interest rate (*i.e.,* exclusive of foreign currency borrowings) as of September 30, 2000, and the short-term interest rate as of September 30, 1999.

This change is discussed in the relevant section of the *Decision Memorandum.* We have made no other changes to the margin calculation.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer/exporter/reseller	Margin (percent)
AST	0.66

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific ad valorem duty assessment rates. Where the importer-specific assessment rate is above *de minimis,* we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 11.23 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

[7] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

[8] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Classification of U.S. Sales
Comment 2: CEP Offset
Comment 3: Major Inputs from Affiliated Suppliers
Comment 4: Home Market Short-Term Interest Rate
Comment 5: U.S. Insurance Revenue

[FR Doc. 02–887 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan: Notice of Revocation of Antidumping Duty Order and Termination of Antidumping Duty Administrative Reviews and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on the finding of the U.S. International Trade Commission, the Department of Commerce is revoking the antidumping duty order covering static random access memory semiconductors from Taiwan and terminating the antidumping duty administrative and the new shipper reviews.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the notice of its final less-than-fair-value determination on static random access memory semiconductors (SRAMs) from Taiwan on February 23, 1998. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (Feb. 23, 1998). On April 9, 1998, the U.S. International Trade Commission (ITC) made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of the subject merchandise. The Department published the notice of its amended final affirmative less-than-fair-value determination on SRAMs from Taiwan on April 16, 1998. See *Notice of Amended Final Determination and Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 18883 (April 16, 1998). Finally, the Department published the amended antidumping order covering the subject merchandise on April 22, 1998. *See Notice of Amended Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 19898 (April 22, 1998).

Following publication of the amended antidumping duty order, the Taiwan Semiconductor Industry Association, an interested party, challenged the ITC's final affirmative determination of material injury in an action in the U.S. Court of International Trade (CIT). In two subsequent decisions, the CIT remanded the case to the ITC. *See Taiwan Semiconductor Industry Association, et al.* v. *United States,* 59 F. Supp. 2d 1324, 1336 (CIT 1999); *see also Taiwan Semiconductor Industry Association* v. *United States,* 93 F. Supp. 2d 1283 (CIT 2000). On the second remand, the ITC determined that an industry in the United States is not being materially injured, nor is it threatened with material injury, by reason of imports of the subject merchandise. The CIT affirmed the ITC's second remand determination on August 29, 2000. *See Taiwan Semiconductor Industry Association et al.* v. *United States,* 118 F. Supp. 2d 1250 (CIT 2000).

The domestic industry (Micron Technology) appealed the CIT decision to the CAFC. The CAFC issued a decision on September 21, 2001, affirming the CIT's decision upholding the ITC's second remand determination. *See Taiwan Semiconductor Industry Association,* 266 F. 3d 1339 (CAFC 2001). On November 5, 2001, the ITC filed a petition for rehearing at the CAFC. The CAFC denied this petition and issued its mandate on December 11, 2001.

Because this decision is now final, the ITC issued its final negative injury determination on December 28, 2001. *See Static Random Access Memory Semiconductors From Taiwan; Notice of Final Decision Affirming Remand Determination,* 67 FR 345 (January 3, 2002). Accordingly, we are revoking the order with respect to SRAMs from Taiwan. In addition, we are terminating the antidumping duty administrative reviews and the new shipper review of this order.

Scope of the Order

The products covered by this order are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this order includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this order does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.,* SRAMs soldered onto motherboards). The SRAMs within the scope of this order are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the

HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Determination To Revoke and Termination of Reviews

Because the ITC has issued a negative injury determination in the case of SRAMs from Taiwan, we are revoking the antidumping duty order on SRAMs from Taiwan. In addition, we are terminating the administrative reviews on SRAMs from Taiwan for the periods April 1, 1999, through March 31, 2000, and April 1, 2000, through March 31, 2001, and the new shipper review for the period April 1, 2000, through March 31, 2001. Accordingly, we will instruct the Customs Service to terminate suspension of liquidation on all entries of SRAMs from Taiwan from October 1, 1997, to the present and refund all duties deposited by importers plus interest where applicable pursuant to section 778 of the Act.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–888 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–2002–04]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement; Global Carbon Cycle Element, FY 2002

AGENCY: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for applications.

SUMMARY: This notice serves the following purpose: To announce an opportunity for FY 2002 funding for the Global Carbon Cycle program area. Details of program emphases and topic areas can be found below in supplementary information, and in the GCC program information sheet at: *http://www.ogp.noaa.gov/mpe/gcc/index/html.*

Potential applicants should look at the specific wording of the initial **Federal Register** notice (cited below in SUPPLEMENTARY INFORMATION).

DATES: Letters of intent must be received at the Office of Global Programs (OGP) no later than February 15, 2002. Applicants who have not received a response to their letter of intent within two weeks should contact the Program Manager. Full proposals must be received at OGP no later than March 29, 2002, except for repeat hydrography proposals to be jointly considered with the National Science Foundation (NSF), which must be received no later than March 5, 2002, as noted below under supplementary information. We anticipate that review of full proposals will occur during April and May 2002. September 1, 2002, should be used as the proposed start date on proposals.

ADDRESSES: Applications should be sent to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1210, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address, phone: (301) 427–2089 ext. 107, e-mail: *irma.dupree@noaa.gov.*

SUPPLEMENTARY INFORMATION: The notice describing the Program and funding area descriptions for FY 2002 was published on May 16, 2001 (66 FR 27070–75) in a notice entitled NOAA Climate and Global Change Program. The program description, background and requirements, as well as guidelines for applications are included in that notice and are not repeated here.

Global Carbon Cycle (GCC): The U.S. Interagency Carbon Cycle Science Program (CCSP) seeks to answer two overarching questions: (1) How large and variable are the dynamic reservoirs and fluxes of carbon within the Earth system, and how might carbon cycling change and be changed in future years, decades and centuries?, and (2) What are our options for managing carbon sources and sinks to achieve an appropriate balance of risk, costs, and benefits to society? For more detailed information on interagency priorities, science planning and agency roles, please consult the Internet at: *http://www.carboncyclescience.gov.*

NOAA's participation in the CCSP focuses on three main goals: (1) Quantifying spatial patterns and variability of carbon sources and sinks at global to regional scales; (2) Documenting the fate of anthropogenic CO_2 in the atmosphere and oceans; and (3) Improving future climate predictions by incorporating a dynamic understanding of the carbon cycle into models. To achieve these goals, the GCC program focuses on oceanic and atmospheric observations, process-oriented field studies and modeling. Information and current project abstracts can be found on the Internet at: *http://www.ogp.noaa.gov/mpe/gcc/index/html*

For FY 2002, GCC is soliciting projects in support of these goals in the following topic areas: (A) Global Distribution and Dynamics of Carbon Sources and Sinks; (B) Carbon budgets over North America and adjacent ocean basins; and (C) Synthesis, Modeling and Interpretative studies.

Global Distribution and Dynamics of Carbon Sources and Sinks: A variety of atmospheric, oceanic and terrestrial data has shown that the ocean and the terrestrial biosphere currently take up and store a significant portion of the carbon released to the atmosphere as a result of human activities. Preliminary progress has been made on locating sources and sinks of carbon on a regional basis and characterizing their magnitude and behavior over time. The results obtained thus far are at the limit of detection, however, and cannot be extended to many regions of the world due to lack of data.

In FY2002, GCC is seeking to augment the observational network in the ocean and atmosphere to fill in critical spatial and temporal gaps, as well as supporting research in network design, parameterization improvement, and data management.

Carbon Budgets over North America and Adjacent Ocean Basins: One region of uncertainty in the global carbon cycle budget is North America and the adjacent ocean basins. Recent studies indicate that the region may be currently taking up carbon at a significant level, however data and models needed to monitor budgets at the required spatial and temporal resolution are insufficient. Research advances now offer the opportunity to resolve the regional pattern of and mechanisms responsible for carbon dioxide uptake. In FY 2002, GCC is seeking to participate in a coordinated, interagency effort to conduct pilot observations, data assimilation, and network design in North America, and the North Atlantic and Pacific oceans.

Synthesis, Modeling and Interpretive Studies: In FY 2002, GCC is seeking

studies using empirical data and synthesized datasets, existing models, data assimilation techniques, and theory to advance the ability to quantify spatial patterns and variability of carbon sources and sinks at global to regional scales; document the fate of anthropogenic CO_2 in the atmosphere and oceans; and/or improve future climate predictions by incorporating a dynamic understanding of the carbon cycle into models.

For detailed information on the types of projects encouraged, please consult the GCC information sheet, posted on the Internet at: *http://www.ogp.noaa.gov/mpe/gcc/index.htm.* Contingent on available funding, projects awarded under this program announcement will be jointly supported by NOAA's Climate and Global Change and Climate Observations and Services Programs.

Contingent on available funding, this announcement serves as notice that NOAA and NSF will jointly consider proposals in FY 2002 to conduct a repeat hydrographic survey in support of the U.S. Carbon Cycle Science and CLIVAR Programs. Proposals for that topic should be submitted to NSF under Program Announcement NSF 02–016 via fastlane no later than March 5, 2002. Three paper copies should also be sent to NOAA/OGP by the same date.

For further technical information contact: Lisa Dilling at the above address, phone: (301) 427–2089 ext. 106, e-mail: *dilling@gp.noaa.gov*, or Krisa Arzayus, (301) 427–2089 ext. 183 e-mail: *Krisa.arzayus@noaa.gov* or see the web at: *http://www.lgp.noaa.gov/mpe/gcc/index/html.*

Other Requirements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreement contained in the Federal Register notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation.

Classification: It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.,* is not required and has not been prepared for this notice.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) control number. This notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046.

Authority: 49 U.S.C. 44720; 33 U.S.C. 883d, 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.*

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–898 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011102267–1267–01; I.D. No. 102301B]

Financial Assistance for Marine Mammal Stranding Networks Through the John H. Prescott Marine Mammal Rescue Assistance Grant Program

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

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS) (hereinafter ''we'' or ''us'') issues this document to solicit applications for Federal assistance under the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Stranding Grant Program). This document describes how you can apply for funding under the Program, and how we will determine which applications will be funded.

Under the Prescott Stranding Grant Program, we will provide financial assistance (up to $100,000 in Federal funds, with a 25 percent non-federal cost-sharing requirement) to eligible marine mammal stranding network participants for (1) the recovery or treatment of stranded marine mammals and (2) the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health. Financial assistance will also be given for facility operation costs that are directly related to (1) and (2), above. Proposals will be reviewed, ranked within Regional or National priority pools based on technical merit, and final selections will take into account other policy factors including level of priority, stranding needs, and equitable distribution of funds nationally.

DATES: We must receive your application by 5 p.m. (local time) March 15, 2002 in one of the offices listed in section I.I. (Applications Addresses) of this document. You must submit one signed original and two copies of the completed application (including supporting information). We will not accept facsimile or electronic applications.

ADDRESSES: You can obtain an application package from, and send your completed application(s) to, the NMFS Regional Administrator or the Protected Resources Office Director located at any of the offices listed in section I.I. Application Addresses of this document. You may also obtain the application package from the NMFS Protected Resources Home Page (*see* Section I.J. Electronic Access Addresses). However, we cannot accept completed applications electronically at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Coogan or Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program 301–713–2322 ext 144, or 178 or via e-mail: *PrescottGrantFR.comments@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

We are soliciting applications for Federal assistance pursuant to The Marine Mammal Rescue Assistance Act of 2000 which amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1) (hereafter referred to as the Prescott Stranding Grant Program). This document describes how you can apply for funding appropriated in fiscal years (FY) 2001 and 2002 under the Prescott Stranding Grant Program and how we will determine which applications will be funded.

A. Background

The Prescott Stranding Grant Program is conducted by the Secretary of Commerce to provide grants or cooperative agreements for eligible stranding network participants (see section I.E. of this document) for (1) recovery or treatment of marine mammals, (2) collection of data from living or dead stranded marine

mammals[1] for scientific research regarding marine mammal health and (3) for facilities operations costs that are directly related to these purposes. The Prescott Stranding Grant Program will be administered through the NMFS Marine Mammal Health and Stranding Response Program.

The Marine Mammal Health and Stranding Response Program (MMHSRP) was formalized in 1992 to fulfill the mandates of the Marine Mammal Health and Stranding Response Act, which amended the MMPA in 1992 (16 U.S.C. 1421). The MMHSRP was established to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events. Steps to achieve these goals, as well as the goals of the Prescott Stranding Grant Program, include the enhancement of rescue, care and treatment of stranded marine mammals; collection of life history data and other biomedical data that would allow comparison of the causes of illness or deaths in stranded marine mammals with physical, chemical, and biological environmental parameters; development of baselines of ''normal'' stranding causes and rates for rapid detection of unusual mortality events; collection of samples for archival for future retrospective studies on causes of mortality or illness; collection of tissues for archival in the National Marine Mammal Tissue (and Serum) Bank; and guidance for rescuing and rehabilitation of stranded marine mammals, collection of specimens, quality assurance, and analysis of tissue samples. Grant proposals based on the priorities specified in Section II of this document, will facilitate achievement of MMHSRP goals while fulfilling the purposes and requirements of the Prescott Stranding Grant Program.

It is NMFS's intent to also reserve a portion of funds to make emergency assistance available for catastrophic stranding events throughout the year on an as-needed basis. Responders to such stranding events should immediately contact their Regional Office (*see* section I.I. Application Addresses). Proposals will be required to follow the same application, merit review and selection process established under this notice.

B. Objectives

For the 2001/2002 Prescott Stranding Grant Program announced in this document, we have focused on the most important needs of the Marine Mammal Health and Stranding Response Program and the stranding network. These needs are reflected in the funding priorities listed in section II of this document. Successful applications will be those aimed at helping to support and increase the quality of care (recovery or treatment) for stranded marine mammals or to increase our understanding of the health of marine mammal populations in the wild, of trends in strandings, or of the causes of marine mammal mortalities, anomalies, and strandings in the wild. For data collection funding, efforts to increase our understanding of the correlation between physical, chemical, and environmental parameters and marine mammal health and strandings will be considered priorities.

C. Changes in the Implementation of the Prescott Stranding Grant Program Since the Posting of the Draft Implementation Plan

On June 7, 2001, a draft of our plan to implement the Prescott Stranding Grant Program was posted on our website, and comments were solicited from stranding network participants. As a result of comments received, a number of changes have been made that are reflected in this document. Therefore, we encourage you to read the entire document before preparing your application.

We have changed the maximum size of the Federal share of the grant to $100,000. We have clarified the eligibility criteria, and expanded the list of eligible applicants to include qualified Federal employees that work for agencies other than the Departments of Commerce or Interior, if those agencies have the authority to accept Federal assistance. We have reformatted the priority lists, and edited and added some priorities in response to public comments.

D. Funding

We expect to have approximately $7.1 million available for grant awards for grants under this solicitation. These funds include approximately $3.7 million appropriated for the 2001 fiscal year, and approximately $4 million appropriated for FY 2002 (Pub. L. 107–77). We will withhold $600,000 to make available for catastrophic stranding events that occur before the next grant cycle. The maximum Federal award for each project will be $100,000. For this solicitation, stranding network members may receive (as Principal Investigators) up to two grants for clearly separate projects. Researchers associated with the Network that are not authorized network participants (through a Letter of Agreement (LOA), MMPA section 109(h), or Northwest Contingency Plan designation) may receive only one grant (as Principal Investigator) under this solicitation if a network participant is a co-Investigator. However, we cannot guarantee that sufficient funds will be available to make awards for all proposals deserving funding.

Publication of this document does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

E. Eligibility

For this solicitation, you are eligible to apply for a grant or a cooperative agreement under the Prescott Stranding Grant Program if you are a U.S. ''stranding network participant'' that is not a Department of Commerce or Department of Interior employee. Specifically, you are eligible if:

1. You are an eligible stranding network participant that has been active over the past 3 years and are in good standing.[2] A network participant in

[1] For purposes of this document, a stranded marine mammal is a marine mammal in the wild that is (1) dead and on a beach, shore, or in waters under the jurisdiction of the United States or (2) is live and on a beach or shore of the United States and unable to return to the water, is in apparent need of medical attention, or is in waters under the jurisdiction of the United States but is unable to return to its natural habitat under its own power or without assistance.

[2] In good standing status will be determined by the Regional Stranding Coordinators during the initial screening for applicants' eligibility, and means:

a. All the Principal Investigators who hold or have held permits for scientific research, enhancement, or public display under the Marine Mammal Protection Act or Endangered Species Act must have fulfilled all permit requirements, including but not limited to reports and publications and must have fulfilled the terms of any enforcement actions. Adverse permit actions will be considered on a case by case basis in terms of meeting this requirement.

b. The stranding participant has complied with the terms and responsibilities of the Letter of Agreement listed below, or, for a participant authorized under MMPA section 109(h) or Northwest Region Contingency Plan participant, has met the following responsibilities consistently. These responsibilities include: timely response to reports of strandings, cooperation with state, local, and Federal officials, assisting local officials in the clean-up of beach areas resulting from collection or necropsy activities, collecting information or samples as requested by NMFS whenever possible, timely submission of reports to the Regional

Continued

good standing is an organization that has a current Letter of Agreement (LOA) for stranding response (either live or dead animal response) from a NMFS Regional Administrator; that has a current letter of designation from a NMFS LOA holder (designee); or you are a researcher collaborating with a network participant that is listed as a co-investigator on your application, you have remained active in network projects during the past 3 years, and you are holding a current letter from a Regional Administrator or the NMFS Office of Protected Resources authorizing you pursuant to 50 CFR 216.22 to collect materials from stranded marine mammals for research purposes.

2. You are a state, local, or eligible federal government employee participating pursuant to MMPA section 109(h) (16 U.S.C. 1379(h)), and working in good standing [2] with a Regional Administrator during the past 3 years in an area of geographic need (municipality or larger region with no existing responder).

3. You are in the Northwest Region (Washington and Oregon), are an active stranding network participant in good standing [2], and are (1) an individual or organization named in the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events (Wilkinson, 1996) that has been actively involved in stranding response, data collection and submission of data as directed by the NMFS Regional Stranding Coordinator during the past 3 years or (2) an individual or organization in the 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality Events.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from eligible individuals, government entities, and businesses in U.S. insular areas as defined by the Marine Mammal Protection Act (16 U.S.C. 1362, section 3(14)). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and Northern Mariana Islands.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

You are not eligible to submit an application under this program if you are an employee of NMFS or any other organizations within the Department of Commerce or the Department of Interior. NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help you prepare your application, except that the Marine Mammal Health and Stranding Response Program staff (at the regional or national level) may provide you with information regarding statistics on strandings, MMHSRP program goals and needs, ongoing programs, funding priorities, and, along with Federal Program Officers, can provide information on application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for any proposal. For activities that involve participation of NOAA employees, for example in the National Marine Mammal Tissue Bank (NMMTB) or analyses of tissues for contaminants, employees of NOAA or the National Institute of Standards and Technology may write a letter stating that they are collaborating with the project, or that the person or organization is trained to participate in the NMMTB or is currently participating in the National Marine Analytical Quality Assurance Program.

Unsatisfactory performance under prior or current Federal awards may result in your application not being considered for funding for this fiscal year in this program.

Note for proposed work beyond the normal scope of stranding network activities, the applicant is responsible for obtaining all the Federal, state, and local government permits and approvals including scientific research permits under the Endangered Species Act or Marine Mammal Protection Act if needed and permits or letters of agreement for work in National Marine Sanctuaries, National Parks, or National Seashores for activities that would be conducted on such sites. For information on permit requirements and applications procedures, contact the NMFS Office of Protected Resources (*see CONTACTS*) or see the following Web site: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.*

For research on live stranded marine mammals, if the applicant stranding network or research participant works for a facility (University, Aquarium, live animal research facility) with an Institutional Animal Care and Use Committee, that applicant must have approval prior to obligation of funds (as required by the regulations under the Animal Welfare Act, 9 CFR 2.30–2.31) and a Marine Mammal Protection Act/Endangered Species Act permit if the research is intrusive (50 CFR 216.27(c)(6)) or if animals must be held after rehabilitation has been completed.

Intrusive research means a procedure conducted for bona fide scientific research involving: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animals' immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (*i.e.,* chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (*i.e.,* audio broadcasts directed at animals that may affect behavior or brainstem auditory evoked responses). Activities directly related to the individual animal's health assessment, accepted diagnostics, treatment, or monitoring are authorized under the stranding authorization and do not require an additional research permit.

F. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum award period of 3 years; however the total Federal share of each award is fixed at

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Coordinator (basic or Level A data reporting which includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports), cooperation with state and local officials in the disposition of stranded marine mammals, cooperation with other stranding network participants.

c. The network participant cooperates with NMFS regarding the timely submission of Level B (supplementary information regarding sample collection related to life history and to the stranding event) and C (necropsy results) data and materials collected, when collected and requested.

d. Is not under current enforcement investigation for activities involving the take of marine mammals contrary to the MMPA/ESA regulations and does not have a notice of violation by NMFS pending resolution with regards to policies governing the goals and operations of the Stranding Network.

a maximum of $100,000 regardless of the funding period requested. We will not accept proposals requesting incrementally funded projects under the Prescott Stranding Grant Program during this grant cycle. If you have received an award and have not expended all the awarded funds by the end of the grant period and wish to continue work on the project beyond the funding period with money already obligated, you may notify the grants officer 30 days prior to the end of the grant to determine if you are eligible for a no-cost extension. If, however, the money is expended and you want funds to continue the project, you must submit another proposal during the next grant cycle subject to the competitive process for consideration.

If we select your application for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding up to the maximum of $100,000 in the Federal share, or extend the period of performance, is totally at our discretion.

G. Cost Sharing

The Prescott Stranding Grant Program legislation requires cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. You must provide a minimum cost share of 25 percent of total project costs (Federal share of project costs cannot exceed $100,000 and 75 percent of the total). For example, if the total project costs were $133,334, then the federal cost share would be 75 percent of $133,334 or $100,000 and your cost share would be $33,334 (25 percent of $133,334); similarly if the proposed total budget for your project is $100,000, the government portion would be $75,000 and your 25 percent contribution would be $25,000. If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding for this funding cycle. You may include cost share for more than 25 percent of the total costs, but this obligation will be binding.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, according to the regulations codified at 15 CFR 14.23 and 24.41, posted on our webpage. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated, or to obtain such services or property for the period of the loan. You must document the in-kind services or property you will use to fulfill your cost share. If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document.

H. Catalog of Federal Domestic Assistance

The Prescott Stranding Grant Program will be listed in the ''Catalog of Federal Domestic Assistance'' under number 11.439, entitled Marine Mammal Data Program. This information should be included on the Application Form, 424, space 10 (*see* How to Apply, Section III, below).

I. Application Addresses

a. For proposals for activities that will take place in the NMFS Northeast Stranding Region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia) contact: Northeast Fisheries Science Center, NMFS, Dana Hartley, 166 Water St., Woods Hole, MA 02543, (508) 495–2090 or *dana.hartley@noaa.gov.*

b. For proposals for activities that will take place in the NMFS Southeast Stranding Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, U.S. Virgin Islands) contact: Southeast Region, NMFS, Kyle Baker, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432, (727) 570–5312 or *Kyle.Baker@noaa.gov.*

c. For proposals for activities that will take place in the NMFS Southwest Stranding Region (California, Hawaii, Guam, U.S. Somoa, Northern Mariana Islands) contact: Southwest Region, NMFS, Joe Cordaro, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA: 90802–4213, (562) 980–4017 or *joe.cordaro@noaa.gov.*

d. For proposals for activities that will take place in the NMFS Northwest Stranding Region (Washington and Oregon) contact: Northwest Region, NMFS, Brent Norberg, 7600 Sand Point Way, N.E., Building 1, Seattle, WA 98115, (206) 526–6733 or *brent.norberg@noaa.gov.*

e. For proposals for activities that will take place in the NMFS Alaska stranding region (Alaska) contact: Alaska Region, NMFS, Kaja Brix, Federal Building, 709 West 9th Street, 14th Floor, Juneau, AK 99802–1668, (907) 586–7824 or *kaja.brix@noaa.gov.*

f. For proposals for activities that will take place in more than one region or are national in scope contact: Office of Protected Resources, NMFS, Teri Rowles, 1315 East West Highway, Silver Spring, MD, 20910, 301–713–2322 ext 178 or *teri.rowles@noaa.gov.*

J. Electronic Access Addresses

This solicitation, the application package, and supplementary documents are available on the NMFS Office of Protected Resources Home Page at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html.* Title IV of the Marine Mammal Protection Act, the Marine Mammal Health and Stranding Response Program is available at: *www.nmfs.noaa.gov/prot_res/laws/MMPA/MMPA.html.* Information on MMPA and ESA research and enhancement permits can be found at: *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.*

II. Funding Priorities

Your proposal must address and identify one of the priorities listed here as it pertains to species that the MMPA provides under the authority of the Department of Commerce (cetaceans and pinnipeds, except walrus). If you identify more than one priority, you must list first on your application the priority that most closely reflects the objectives of your proposal.

The priorities are not listed in any particular order and each is of equal importance. These priorities include projects that generally increase the quality of care (recovery or treatment) for stranded marine mammals or increase our understanding of the health of marine mammal populations in the wild, of trends in strandings, or of the causes of marine mammal mortalities, anomalies, and strandings in the wild. Also, efforts to increase our understanding of the correlation between physical, chemical, and environmental parameters and marine mammal health and strandings will be considered a priority for data collection funding. Projects involving any new construction will not be considered, however, projects that involve construction for build-outs, alterations, upgrades and renovations would address a number of the listed priorities.

Note that the purpose of the priority lists is to guide applicants in proposal development by identifying those proposals that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. To this

end, Regional and National priorities are identified here, and represent the projects that will best ensure that the Prescott Stranding Grant Program is successfully implemented (by providing grants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes) in the manner that best helps the regions achieve the goals of the Marine Mammal Health and Stranding Response Program. To ensure that the goals of the Prescott Stranding Grant Program are met, including equitable distribution of funds, proposals will be pooled by regional or national aspect according to the priority addressed by the applicant. If a proposal unclearly identifies a priority, or addresses a different priority than the one indicated by the applicant, NMFS may assign the most appropriate priority. Proposals will then compete for funds within the appropriate regional/national priority pool.

Specifically the following items are the national or specific regional priorities for this solicitation:

A. Recovery or Treatment of Marine Mammals (and associated operational costs)

National

1. Operational costs to enhance and support rehabilitation facilities.
2. Operational costs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment of medical condition or monitoring of treatment response.
3. Post release monitoring to monitor the success of animals released from rehabilitation or beach release from mass strandings.
4. Equipment costs to increase the safety of transport for marine mammals, especially for cetaceans.

Northeast Region

1. Enhanced preparedness for mass stranding events through, for example, establishment of reference baseline laboratories, through training, or improvement of equipment and resource availability.
2. Enhanced preparedness for ''out of habitat'' (marine mammals observed outside of their range or normal environment and in apparent distress) rescues.
3. Enhancing transport safety for live strandings, including, for example, contracts for air transport, rescue ambulances.
4. Improvement of identification and tracking of offshore, floating, dead large whales or unusual species or numbers of dead marine mammals.
5. Increased outreach efforts in areas of heavy human and protected species use, such as rookeries, to reduce harassment and injuries or illnesses caused by other human impacts (e.g. boat strikes on seals) to reduce the need for rehabilitation.
6. Enhanced capability to respond to stranded marine mammals impacted by oil spills including treatment and investigations.
7. Collaborative efforts to improve assessment of seal strandings, for example seal assessment training for collaborating network participants, equipment, and supplies.
8. Outreach projects to educate the public about normal seal behavior vs stranded seal situation.
9. Renovating rehabilitation space for marine mammals in anticipation of rehabilitation facility guidelines, including expansion of holding capabilities within existing facilities.
10. Increase the number of needed personnel resources at certain facilities, including veterinary care. Note, salaries must be for work specific to the project.

Northwest Region

1. Upgrading and enhancing network operations and facilities to handle and treat stranded sick or injured marine mammals including threatened, endangered and depleted pinnipeds and small cetaceans (porpoises, dolphins, killer whales).
2. Enhancing facilities for handling, stabilization and/or treatment of stranded odontocetes (killer whales, dolphins, porpoises).
3. Enhancement of operations and facilities in anticipation of NMFS Rehabilitation Facilities Guidelines.

Southeast Region

1. Enhanced preparedness for live and mass stranded cetacean response, including training, response planning, outreach, and equipment.
2. Enhanced capability to respond to stranded marine mammals impacted by oil spills including response planning, training, and equipment.
3. Enhancing live marine mammal transport safety e.g., contract for air transport, rescue ambulances.
4. Upgrading current rehabilitation facilities. Putting priority on facilities that frequently receive animals (based on historic statistics) and for upgrades in anticipation of rehabilitation guidelines.

Southwest Region

1. Operational costs for stranding response and live animal treatment. For this Region, priority will be given to smaller facilities.
2. Enhancing response capabilities (including operational costs) during El Nino years.
3. Enhanced capability to respond to stranded marine mammals impacted by oil spills including response planning, training, and equipment.
4. Enhancing the response to live stranded cetaceans and pinnipeds in Hawaii.
5. Operations costs for increasing quality of care during normal live stranding events throughout the region.
6. Upgrading facilities in anticipation of rehabilitation facility guidelines.
7. In Hawaii, conduct outreach projects to educate the public about normal seal behavior vs stranded seal situation.
8. Enhancing live cetacean response and transport safety through operational or equipment costs.

Alaska Region

1. Enhanced stranding response throughout the state. Particular need for improved stranding response coverage in remote or rural areas.
2. Enhanced capability for care and treatment of live animals.
3. Enhancing disentanglement response capabilities, particularly with Northern fur seals on the Pribilofs.
4. Enhancing the assessment of rehabilitation and release success.

B. Collection of Data From Living or Dead Stranded Marine Mammals (including operational costs)

National

1. Enhancing consistent response to large whale strandings (except North Atlantic right whales, which have separate funding source) on the East Coast.
2. Enhancing post ''unusual mortality event'' stranding response for 1–2 years after an event is over.
3. Operational costs to improve in-house sample tracking and archiving and for participation in the National Marine Mammal Tissue Bank.
4. Collecting specimens and data to assess the overall health trends in wild marine mammal populations including the frequency or incidence of diseases and anomalies, the cause and effects of abnormal lesions, and baselines on health. Species of concern for 2001–2002 include bottlenose dolphin, harbor porpoise, California sea lion, Steller sea lion, Hawaiian monk seal, ice seals in the Northeast, pygmy sperm whale,

beaked whale, humpback whale, and harbor seal.

5. Collection of health reference data on species that have been subject to unusual mortality events (bottlenose dolphins, California sea lions, harbor seals, gray whales) in the last 5 years.

6. Collection of health reference data on species that are subject to mass strandings (white sided dolphins, beaked whales, pilot whales, common dolphins, rough tooth dolphins).

7. Collection of health data to examine successful rehabilitation including, for example, shifts in microbial flora during rehabilitation.

8. Collection of data on the incidence, pathogenesis, and impacts of marine mammal diseases and conditions that affect survival and releasability. The diseases of particular interest for 2001–2002 are: Brucella, morbillivirus (particularly on West Coast pinnipeds and in bottlenose dolphins of the mid-Atlantic), herpes virus in monk seals and steller sea lions, arborviruses in cetaceans and pinnipeds. However other disease studies will be considered.

9. Enhancement and consistency of data collection and collaborative efforts through the use of protocols and training manuals, in either electronic format or in book format. Electronic formats can include video, imagery, and search capabilities.

10. Enhancing the ability to assess health in stranded marine mammals through the development of new assessment tools and techniques.

11. Enhancing the assessment of the causes of single and mass stranded marine mammals through biological, physiological, or medical diagnostic studies. Animals of particular interest include beaked whales.

12. Necropsy equipment and carcass transport equipment especially for large cetaceans.

13. Upgrading information management systems and capabilities to improve or allow access to National databases.

14. Enhance efforts to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible along all U.S. coasts.

Northeast Region

1. Cooperative projects, through partnerships with a variety of marine mammal experts, to conduct studies supporting Marine Mammal Health and Stranding Response Program objectives.

2. Monitoring of survival of beach released, and rehabilitated and released cetaceans (satellite tags and ARGOS support).

3. Support for stranding network staff and capabilities to provide near real time strandings data and information management.

4. Collection of samples for genetic analyses and archival of samples for future retrospective studies.

5. Serological and histopathological analyses of samples collected from stranded marine mammals, using NMFS recognized laboratories.

6. Characterization of ice seal movements from stocks in Canada and relationship to strandings on the U.S. East Coast.

7. Performing quality assurance review and editing of historical stranding data for regional strandings. Particular emphasis to ensure data consistency with existing databases through collaboration with letterholders in the region, and with the Cetacean Distribution Database, compiled by the Marine Mammal Program, National Museum of Natural History, Smithsonian Institution

8. Enhanced evaluation and collection of human interaction evidence from stranded marine mammals, including costs for training collaborating Network Members to detect and document this evidence.

9. Enhance necropsy facilities and other improvements to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible.

Northwest Region

1. Investigations of (a) the incidence of human interactions; (b) diseases affecting; and (c) comparative studies of contaminant loading on marine mammals.

2. Investigations of health factors of stranded marine mammals with emphasis on southern resident killer whales.

3. Improve stranded marine mammal data collection and management.

4. Post unusual mortality event monitoring to enhance data collection after an event has ended.

Southeast Region

1. Enhanced collection and evaluation of human interaction evidence from stranded marine mammals.

2. Cooperative investigations using in-depth sample collection for marine mammal health research projects.

3. Serological and histopathologic analyses of samples collected from stranded marine mammals, using quality control techniques.

4. Developing the baselines and health reference data for comparisons with mortalities and disease observed during die-offs.

5. Equipment and facility enhancements for scientific health research *e.g.,* necropsy facilities.

6. Enhance efforts to achieve accurate, consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible throughout the Region.

Southwest Region

1. Gray whale stranding investigations.

2. Cooperative projects in Hawaii through partnerships with a variety of marine mammal experts, to respond to and conduct studies supporting Marine Mammal Health and Stranding Response Program objectives.

3. Investigations of the prevalence of such diseases as morbillivirus in live stranded odontocetes.

4. Enhancing the ability to detect gun shot wounds and injuries in stranded California sea lions, for example, through conduct of thorough necropsies.

Alaska Region

1. Achieve consistent Level A data collection throughout the state, including remote areas.

2. Collect Level B and Level C data collection for dead strandings whenever possible.

3. Tissue sampling for genetic analyses.

4. Gray whale stranding response for post unusual mortality event.

III. How To Apply

You must follow the instructions in this document in order to apply for a grant or cooperative agreement under the Prescott Stranding Grant Program. Your application must be complete and must follow the format described here. Your application should not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your application. These unbound applications must be sent to the Application Addresses listed in Section I.I. of this document by the application deadline (*see* **DATES**). We strongly recommend early submission of applications to allow some time for review and resubmission with corrections for minor omissions, if necessary. However, time and resource constraints may limit our ability to conduct early reviews, and we are not required to screen applications before the submission deadline, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected.

A complete application package with detailed instructions and supplementary information can be found at our Web

site: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html.* Essentially, the complete application must include a number of completed forms described in this section: SF–424 ''Application for Federal Assistance'', SF–424B ''Assurances—Non-Construction Programs'', and SF 424A ''Budget Information—Non-Construction Programs'' (with separate sheet for details). Additionally, the application must include a Title Page, Project Narrative, and supporting documentation, as described in this section. Lastly, applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' In addition, any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'', as required under 15 CFR part 28.

A. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Forms 424 and 424B (4–92) as the cover sheets for each project. You will need the ''Catalog of Federal Domestic Assistance'' number and Title to complete item 10 of Standard Form 424 (see section I in this document above, the number is 11.439, and the title is ''Marine Mammal Data Program''). In order to complete item 16 of Standard Form 424 (may be required for state applicants), see directions in section V.A.5. of this document.

B. Title Page

You must complete a Title Page for each project. You should list on the Title Page the project title, duration, name, affiliation, address and phone number of the Principal Investigator, the project objective, the specific priority to which the application responds (see section II. of this document), and a statement regarding the Federal, non-Federal, and total costs of the project.

C. Project Budget

You must submit a budget for each project, using OMB standard form 424A, Budget Information—Non Construction Programs and associated instructions. On a separate sheet if necessary, you must provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, also describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (*e.g.,* lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25-percent level up to the negotiated rate as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application.

We will not consider fees or profits as allowable costs in your application. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

D. Narrative Project Description

You must provide a narrative description of your project that may be up to 10 pages long. You should use Courier size 12 font, and can single space the narrative. The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

1. Project goals and objectives. Identify the specific priority, listed earlier in this document, to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the marine mammal health and stranding response community. State what you expect the project to accomplish.

2. Project impacts. Describe the anticipated impacts of the project on the recovery or treatment of stranded marine mammals or assessment of marine mammal health. Describe how you will make the results of the project available to the marine mammal health and stranding community.

3. Evaluation of project. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

4. Need for government financial assistance. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

5. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect.

6. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(b) Who will be responsible for carrying out the various activities? Highlight work that will be conducted by co-Investigators. Also, highlight work that will be subcontracted and provisions for competitive subcontracting. The lead organization and person listed as the technical contact, responsible for all technical oversight and implementation of the approved work plan as delineated in the Statement of Work, should be identified as the Principal Investigator. One Principal Investigator must be listed on each project. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or materials, should be referred to as Cooperators or Collaborators.

(c) What are the major products and how will project results be disseminated? Describe products of the project, such as anticipated number of live animals that will be treated, preparation of a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(d) What are the project milestones? List milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities. Although actual stranding events cannot be predicted, historic stranding data can be used to assess season, species, and likelihood of strandings. This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

7. Participation by persons or groups other than the applicant. Describe how government and non-government entities, particularly other members of the marine mammal health and stranding response community, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the marine mammal health and stranding response community in determining which applications to fund.

8. Project management. Describe how the project will be organized and managed. Identify the Principal Investigator and other participants in the project. If you do not identify the Principal Investigator, we will return your application without further consideration. Include a description and copies of Principle Investigator's current LOAs, letter of designation, or letter of research authorization, and any necessary scientific research permits. List the Principle Investigator's and participant's prior or current Federal awards and describe resultant products. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Include copies of any endorsements that you have received from other marine mammal health and stranding response participants related to this project. Provide a statement no more than two pages long of the qualifications and experience (e.g., resume or curriculum vitae) for the Principal Investigator, co-investigators, and any Collaborators, Cooperators, or Consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through Consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, ''Grants and Cooperative Agreements to State and Local Governments,'' and 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations.''

E. Supporting Documentation

You should include any relevant documents and additional information (i.e., maps, background documents, historic stranding statistics) that will help us to understand the project and the problem/opportunity you seek to address. This will not count as a part of the 10 page limit.

IV. Screening, Evaluation, and Selection Procedures

Screening, Evaluation, and Selection Procedures will take place in 4 steps, described in detail in this section: initial screening, technical panel review, merit review, and the final selection by the Selecting Official. The initial review will compile all complete applications submitted by eligible network participants. These applications will be divided for consideration by two technical review panels; one panel to review all west coast applications, one to review all east coast applications. Applications for national priorities will be forwarded to the panel with fewer applications. The technical review panel results will be used to rank the applications within regional (Alaska, Northwest, Southwest, Northeast, Southeast, and National) pools. The merit review will consider the panel comments for the 6 pools of ranked applications and will make recommendations regarding equitable distribution of funds. The Selecting Official will receive the recommendations of the reviewers and will make the final decision regarding which applications will be funded.

A. Initial Screening of Applications

Applications received at any of the NMFS Regional Offices or the Headquarter's Office of Protected Resources, will be screened to ensure that they: were received by the deadline date (*see* **DATES**); include OMB form 424, 424 A., and 424 B. signed and dated by an authorized representative (*see* section III of this document); were submitted by an eligible applicant; provide for at least a 25-percent cost share (*see* section I.G. of this document); involve an eligible activity; address one of the funding priorities for species under Federal jurisdiction (*see* section II.A.–B. of this document); and include a budget and a statement of work including milestones (*see* sections III.C. and III.D.6 of this document); and identify the Principal Investigator (*see* section III.D.8. of this document). If your application does not conform to these requirements and the deadline for submission has passed, we will return it to you without further consideration. If possible, applications should be submitted as early as possible prior to the end of the application period to provide time for us to return incomplete applications to you for correction or completion prior to the deadline. However, we do not have to screen applications before the submission deadline and may not be able to depending upon time and available resources, nor do we have to give you an opportunity to correct any deficiencies that cause your application to be rejected. Only those proposals satisfying all of the basic requirements above will enter the full evaluation phase of the review process, described in here in Section B.

B. Technical Evaluation of Proposed Projects

After the initial screening, we will convene a panel of appropriate private and public sector marine mammal health and stranding response experts to determine the technical merit of each proposal. Proposals submitted to headquarters and regional offices will be evaluated using the same criteria, as defined here in this section. The panel will provide individual evaluations of each proposal, and no consensus scores will be made. Each proposal will be reviewed by at least three technical reviewers. These reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing and will present their reviews to the panel. They will assign scores to applications based on the criteria below, with weights shown in parentheses. Resultant scores will be used to rank proposals in regional (and national) pools.

a. Soundness of project design/conceptual approach/response capabilities. Applications will be evaluated on the conceptual approach; enhancement of stranding response or treatment; the need for such efforts; the applicability of the project to the objectives of the Prescott Stranding Grant Program in implementing the goals of the MMHSRP and addressing one of the listed priorities; the scientific merit of the data collection to enhance the understanding of the health of marine mammal populations in the wild; the likelihood of project results in the time frame specified in the application; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results; whether proposed analyses

include quality assurance considerations. (50 percent)

b. Project management and experience and qualifications of personnel. The organization and management of the project will be evaluated. The project's Principal Investigator and other personnel, including Co-investigators, Consultants and Contractors participating in the project, will be evaluated in terms of related experience and qualifications. The amount of collaboration with other network participants reflected by the proposal will be considered. Applications that include Consultants and Contractors will be reviewed to determine if your involvement, as the primary applicant, is necessary to the conduct of the project and the accomplishment of its objectives. Applications from Principal Investigators that are researchers that do not hold LOAs, are not MMPA Section 109(h) participants, and are not on the Northwest Region's contingency plan list must include copies of the applicant's letter of designation, researcher letter of authorization, research permit and any Co-investigator's letters of authorization. (50 percent)

c. Project evaluation. The effectiveness of your proposed methods to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be examined closely and scores may be marked down accordingly. Budget questions will be flagged by reviewers and may become points of negotiation if the proposal is recommended for funding based on technical merit. The appropriateness of the matching funds to the project will be evaluated and the overall use of the facilities operations costs in support of data collection or response and treatment of marine mammals. (15 percent)

Following the technical review, we will determine the score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will list the applications by region or national pool, rank the lists according to the final technical score, and eliminate from further consideration those applications that do not meet the minimum ''passing'' score of 60 points.

C. Selection Procedures and Project Funding

After projects have been evaluated and ranked, the Marine Mammal Health and Stranding Response Program staff, the NMFS Regional Administrators (RAs) and Office Directors (ODs) will conduct a merit review in consultation with the Marine Mammal Commission and U.S. Fish and Wildlife Service, to consider the results of the scientific technical panel review and develop recommendations for program funding including recommendations for equitable distribution among the NMFS stranding regions. This merit review team may consider any episodic stranding, any anomalous mortality event, or unusual mortality event that occurred in any region in the preceding year; data regarding average annual strandings and mortality events per year per region; and the size of the marine mammal populations inhabiting a geographic area within such a region. They will also consider the actual stranding statistics per region for the previous 5 non-El Nino years and for the last El Nino year. The review team will prepare a written justification for any recommendations for funding that fall outside the ranking or equitable distribution order, or for any cost adjustments.

The Assistant Administrator for Fisheries (AA) is the Selecting Official, and will review the funding recommendations and comments of the review team and determine the projects to be funded. In making the final selections, the AA may consider costs, geographical distribution, financial need, duplication with other federally funded projects, and equitable distribution of funds among the designated stranding regions. As a result, awards are not necessarily made to the highest technically ranked applications.

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between you and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants Management Division. If the proposed work entails substantial involvement between the applicant and NMFS, a cooperative agreement will be utilized. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. The notice advises you of your responsibilities as an applicant for Federal assistance. Contact the Office of Protected Resources for a copy of this notice, or obtain it from the Government Printing Office Web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html* or the Prescott Stranding Grants Program Web site: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/Prescott.html*.

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that you may have received, the Department of Commerce has no obligation to cover pre-award costs.

A. Your Obligations as a Recipient (Successful Applicant)

If you are awarded a grant or cooperative agreement for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we request that you submit final reports in electronic

format, in accordance with the award terms and conditions, for publication on the NMFS Protected Resources homepage. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. We will consider requests for exemption from electronic submission of final reports on a case-by-case basis.

4. In addition to the final report in section V.A.4. of this document, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

VI. Comments and Responses

The Draft Implementation Plan for the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Draft Implementation Plan) was posted on our website. Stranding network participants were contacted and asked to review the Draft Implementation Plan and provide comment directly to NMFS prior to publication of the Solicitation for Applications in the **Federal Register**. Specifically, we requested comments on several areas of the plan including: eligibility criteria for grant applicants, the grant review and selection process, and priorities for funding.

We received 20 separate comment letters from 12 stranding network participants, the Marine Mammal Commission, three organizations representing constituents that include stranding network participants, two new network members, one advocacy organization, and one researcher interested in network activities. Combining similar comments, we received 78 comments in total. The comments and responses are presented below and are grouped topically. Some purely editorial comments have been incorporated into this document and are not listed here.

General Comments

Comment 1: A number of commenters asked whether multiple applications could be submitted by, or multiple grants awarded to, the same network member. Particularly, commenters asked whether multiple grants could be awarded for clearly separate projects, whether a Principal Investigator on a grant could also apply for funding on another grant (as co-PI), and whether a network member that had already received a grant could apply during the year for funds for a catastrophic strandings.

Response: To clarify the terminology used in this document: A Principal Investigator is the lead organization and person listed as the technical contact, responsible for all technical oversight and implementation of the approved work plan as delineated in the Statement of Work. One Principal Investigator must be listed on each project. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or materials, should be referred to as Cooperators or Collaborators.

There is no limit on the number of applications that can be submitted by the same network member. However, there are insufficient funds to award a grant to every member of the network, and we cannot estimate how many qualified applicants will apply for funds. In an attempt to ensure that the greatest number of network participants receive assistance this year, during this funding cycle we intend to award no more than two grants responding to this solicitation to any network member and their organization as a Principal Investigator. Researchers associated with the network that are not independently authorized (through an LOA, 109(h), or identified in the Northwest Contingency Plan) will only be eligible for one grant under this solicitation. Multiple proposals submitted by any individual or organization must identify clearly different projects; (e.g. one for facility operations to support rehabilitation efforts, one for data collection), and must be successful in the competitive process. Network members and researchers may also be identified as Co-investigators or Cooperators on additional proposals, and may receive reimbursement from other successful applicants for activities such as the conduct of analyses for the project, or the collection of samples. Reimbursement to a cooperating lab or researcher that does work for multiple network members may be identified on multiple proposals.

We intend to withhold up to $600,000 of the 2001/2002 Prescott Stranding Grant Program funds from this grant cycle for use for unexpected events such as mass strandings or oil spill events, that may occur throughout the year. In areas where mass strandings occur frequently, or where events such as El Nino can be anticipated, an application in advance of the event can be submitted to cover known costs involved in preparing for a response if consistent with our listed priorities. Network members that have received 2 grants under the competitive process described in this document will also be eligible for these in-year funds for a catastrophic event.

Note that, as described in 15 CFR 24.24(a)(3), contributions from the applicant counted towards the 25 percent matching requirement must be different for each grant application submitted by an applicant; and funds from one Federal grant cannot be offered as matching funds for another Federal grant.

Comment 2: Grants should be made available for catastrophic events as they occur, or before or after they occur. Since they cannot be predicted, this situation should be explicitly addressed within the Grants Program to maximize the opportunities for funding or reimbursement

Response: We will accept applications for unexpected, large, stranding events, including mass strandings or strandings caused by catastrophic events such as oil spills, throughout the year and will fund successful unsolicited applications from retained FY 2002 funds, if appropriated. Upon the occurrence of a catastrophic event, network participants should immediately contact their NMFS Regional Coordinator regarding their intent to submit an unsolicited application. The same application materials listed in this document (see Section III) must be submitted. The application can be considered outside the competitive process if it meets the MMHSRP objectives, outside of the goals listed in the priorities identified in this document (Section II), if justification for a non-competitive (sole-source) award is established.

Comment 3: One network participant asked whether cooperative applications with a federal agency could be submitted.

Response: Federal agencies are generally barred from accepting funds from another source to pay transportation, travel, or other expenses for any Federal employee unless specifically authorized by law. The Prescott Stranding Grant Program does not specifically authorize the transfer of funds to other Federal agencies for grant projects. The statute also requires a non-Federal matching requirement of 25 percent of the grant. Thus, for this first funding cycle, we have made an administrative decision based on guidance from the statute and associated legislative history regarding the intended purpose of these funds that the agencies and employees within the Department of Commerce (DOC) and the Department of Interior (DOI) are not

eligible to apply as Principal or Co Investigators and cannot receive compensation from this program beyond costs for analyses conducted as a Cooperator on a project. Eligible network members employed by other Federal agencies (with the appropriate authority to receive Federal Assistance) outside of DOI and DOC will need prior approval from their agency to receive compensation and/or expenses from a Federal grant. Additionally, network participants can submit applications with federal agencies listed as Cooperators on the project, and applications can include reimbursement to federal laboratories conducting analyses for the proposed project.

Comment 4: Two commenters expressed concerns regarding the apparent non-cooperative, competitive nature of the Implementation Plan for the Prescott Stranding Grant Program. Requiring that individual researchers apply for funds with a stranding organization as a sponsoring organization was recommended to encourage cooperation. Additionally, one commenter suggests giving extra weighting to proposals from multiple LOA holders.

Response: Because funds are limited and the needs of the program are not, the Prescott Grant Program is competitive. However, although we have limited the number of awards that can be granted to particular applicants as Principal Investigators during this grant cycle, network members and collaborating scientists can participate on additional projects as Co-investigators or Cooperators, and can receive reimbursement from other successful grant applicants. Additionally, Principal Investigators that are not traditional network participants are required to include network members as Co-investigators on their projects. All applicants are encouraged to reimburse LOA holders and other qualified Network participants for tissue collection, data collection, or any other efforts that will be required for the success of the project.

Comment 5: One commenter stated that a mechanism should be developed to ensure accountability for funded projects through review of completed projects or consideration of past performance for applicants awarded previous funding.

Response: All NMFS grant programs must be administered according to procedures identified through a Departmental Administrative Order (DAO 203–26, *see http://www.osec.doc.gov/bmi/daos/203–26.htm*). Final reports are required, and internal checklists and procedures for monitoring grants including site visits, will be followed. Although audits are only required if an applicant gets more than $300,000 in Federal funds per year, all grant recipients must make records available for review or audit if requested. Additionally, unsatisfactory performance in prior or current Federal awards will be considered in determining whether or not an application is eligible for funding this year under the Prescott Stranding Grant Program.

Comment 6: A number of individuals and groups that commented indicated that the constituent groups including the organizations involved in existing stranding programs should have been afforded a greater consultative role in the development of the Prescott Stranding Grant Program. They were concerned that there would be no formal public review and comment period for the Draft Implementation Plan.

Response: The statute directed NMFS to consult with the Marine Mammal Commission, US Fish and Wildlife Service (USFWS) and ''a representative from each of the designated stranding regions, and other individuals who represent public and private organizations that are actively involved in rescue, rehabilitation, release, scientific research, marine conservation, and forensic science regarding stranded marine mammals'; which includes primarily stranding network participants. Given the broad characteristics of the marine mammal stranding network and further directives to administer this program in a timely manner, the selection of a small group of participants to adequately represent the entire network and associated community was deemed insufficient. The Draft Implementation Plan was, therefore, posted on our website, and Network participants were asked for their input. Over 20 commenters responded with extensive comments; including the Marine Mammal Commission, Network members, interested constituents, and constituent groups. All comments were considered, resulting in many revisions to the Program. Experience and feedback resulting from this solicitation may further modify this program in future years.

Comment 7: Two constituent groups commented that constituents should be consulted, per Congressional intent, regarding the development of criteria for and award of grant money.

Response: The criteria for awarding grant money were included in the Draft Implementation Plan section on Screening, Evaluation and Selection Procedures; therefore, constituents have had an opportunity to comment on these criteria and some modifications have been made. Further, technical reviews will be conducted on all complete and qualified applications. Reviewers will include network participants and other constituents. Network participants and constituent groups will therefore have an active role in the award process under the Prescott Stranding Grant Program.

Comment 8: One commenter asked for clarification regarding whether oceanaria that do not have an Institutional Animal Care and Use Committee (IACUC) need to form one if they are going to conduct live animal research. References on the formation of IACUCs were requested.

Response: Facilities and Universities involved in live animal research are required to have an IACUC, per Animal Plant and Health Inspection Service (APHIS) IACUC requirements. Institutions that do not have an IACUC do not have to form one for this grant cycle. However, those institutions or researchers affiliated with Universities that have a standing Committee have to have their Committee's approval before funds will be obligated for projects that require research on live stranded marine mammals. The language relative to this issue has been clarified in this document.

Note that, within the next few years, NMFS intends to require IACUC reviews for live research conducted on stranded marine mammals. Guidance will be developed at that time for the formation of IACUCs for this specific purpose on an institutional or regional level. For general information on IACUCs, see 9 CFR 2.31 for the APHIS IACUC requirements, as well as *The IACUC Handbook* edited by Jerald Sivlerman, Mark A. Suckow, and Sreekant Murthy and published by CRC Press in 2000, or *The Care and Feeding of an IACUC* edited by M. Lawrence Podolsky and Victor S. Lukas and published by CRC Press in 1999.

Any study that requires collection of animals from the wild, invasive procedures beyond those generally used to rehabilitate and release marine mammals, or retention of marine mammals after rehabilitation is complete, may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits have been obtained. For information on permit requirements and applications procedures, contact the NMFS Office of Protected Resources (see **CONTACTS**) or see the following Web site: *http://*

www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.

Comment 9: One commenter requested a listing of the MMHSRP goals to provide guidance to prospective applicants.

Response: These statutory goals are listed in the description of the Prescott Stranding Grant Program (Section I.A. of this document), and are repeated here: to facilitate collection and dissemination of data, to assess health trends in marine mammals, to correlate health with available data on physical, chemical, environmental, and biological parameters, and to coordinate effective responses to unusual mortality event. Further information regarding the MMHSRP can be found on our Web page, at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_and_Stranding_Response_Program/mmhsrp.html.*

Comment 10: A commenter suggested that special terms of reference used throughout the Draft Implementation Plan (out of habitat, level A data) should be defined.

Response: We have included in this Notice clarification of such terms when those terms first appear in context within the document.

Comment 11: Two commenters noted that the plan does not provide funds for species under the jurisdiction of the USFWS, such as sea otters, walrus, polar bears, and manatees, and suggested that there should be increased coordination of the stranding programs under the two agencies' jurisdictions.

Response: NMFS and USFWS were given separate authorizing language in the Marine Mammal Rescue Assistance Act of 2000 (Act) which established the Prescott Stranding Grant Program. NMFS received no comments from the USFWS during the comment period, however, NMFS consulted with USFWS on the implementation of this program prior to finalizing this **Federal Register** notice.

The MMHSRP has been a collaborative effort between USFWS and NMFS, and we will continue that collaboration with the implementation of the Prescott Stranding Grant Program.

Comment 12: One commenter was concerned that the short time allotted for review and incorporation of comments in our initial timeline precluded meaningful revisions based on comments received from stranding network organizations.

Response: This document reflects many changes resulting from the large number of comments received. Indeed review of the comments, revisions, and preparation of responses were partially responsible for the delay in publication of this document. All comments were considered and we made revisions that we determined were appropriate based on consideration of the comments.

Eligibility

Comment 13: A number of commenters indicated that the listed eligibility criteria are too broad and will invite applications from people only remotely associated with the Stranding Network, diluting the intention of the Grant Program to assist or reimburse the active network participants that have been volunteering without Federal support. Some suggested limiting eligibility to Letter of Agreement (LOA) holders, to LOA holders with established records in the recovery and rehabilitation of marine mammals, or to independent researchers sponsored by LOA holders.

Response: Limiting the Prescott Stranding Grant Program only to organizations and individuals holding Letters of Agreement will exclude a large number of active Network participants. In the Northwest Region particularly, there are numerous participants that conduct significant stranding response activities for state or local authorities, or as requested by the NMFS Regional Administrator. Some of these participants are authorized through section 109(h) of the Marine Mammal Protection Act. Additionally, the Network in most regions includes participants designated by LOA holders to respond to strandings and in some cases assist in rehabilitation. These participants include cooperating scientific investigators, institutions, and volunteer organizations. In some areas, designated participants may play a more active role in day-to-day response to strandings than the LOA holders.

LOA holders retain the ultimate responsibility for activities conducted under their authority. Therefore, generally, they restrict designation to individuals that meet appropriate qualifications. Additionally, a list of these designees must be submitted to NMFS. By granting designation, the LOA holders are responsible for ensuring that volunteers and cooperating investigators under their authority are Network participants in good standing. However, we recognize that the list may include new volunteers that require training, or participants that are restricted in response capabilities and authority.

The eligibility criteria have been amended to some extent; however, to include the ''in good standing'' criteria for network participants operating under MMPA section 109(h) (109(h) responders) or other authority, as well as to LOA holders. Additionally, 109(h) participants must be active participants, that have been involved in network activities over the past 3 years.

Another amendment to the eligibility criteria adds a requirement for applicant scientists holding letters from Regional Administrators to collect specimens from stranded animals to conduct research. These scientists may not be LOA holders, 109(h) responders, or on the Northwest Region's contingency list. These applicants must be able to demonstrate participation in network activities during the past 3 years, and must include a network member as a Co-investigator on the project.

Generally, the NMFS Regional Coordinators are familiar with the active network participants within their region, and their screening will provide some assurance that only applications from active and qualified network participants and Collaborators compete for these limited grants.

Comment 14: Allowances should be made for applications from inexperienced applicants if they seek and receive the appropriate permits or letters of authorization before receiving grant awards.

Response: Applications from new network members, such as individuals or groups that have gotten authorization recently, will likely not qualify for eligibility during this first funding cycle unless those applicants have experience as an active Network participant (for example as a designee or 109(h) responder) in good standing for the past 3 years. During the development of the Act, the intent to provide financial assistance to the active volunteer stranding network was clear. The Act's stated intent is to ''provide grants to eligible stranding network participants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes * * *'', and further notes that preference should be given to ''* * * those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals''. However, newcomers that become active participants in the Network will have opportunities to apply for funds in future years if funds are appropriated.

Comment 15: One commenter suggested that the explanation of ''in good standing'' referring to permit holders was redundant, since permit holders should be authorized under LOAs or other listed mechanisms for Network involvement.

Response: There are long term, active Network members that receive verbal requests from their Regional Office to respond to strandings and may hold research permits but do not hold LOAs (although NMFS is developing procedures to issue standardized written LOAs nationally). Additionally, this footnote applies to researchers or Principal Investigators that are authorized network participants but also hold research or public display permits. These applicants may not be eligible if they are not in compliance with their permit conditions since lack of compliance implies a potential inability to responsibly fulfill grant requirements.

Comment 16: Two commenters expressed concerns about criteria listed for ''in good standing''. Since LOAs have not yet been standardized, all participants may not be complying with the specific responsibilities listed. That commenter also felt that the phrase ''in a timely manner'' in the first sentence is subjective. Another commenter took special exception to the criteria for timely reporting of Level B and C data upon request by NMFS. Such reporting is not a requirement of most LOAs, and in some cases cannot be done due to conflicting priorities.

Response: The LOAs are currently being redrafted and standardized, in part because many of the existing agreements were prepared before the passage of the Marine Mammal Health and Stranding Response Act. Many of the new reporting and cooperation standards associated with implementation of the MMHSRP have been passed on to Network members as written requests, but as the commenters have noted, may not be reflected in all existing LOAs. We have modified these requirements to note that, while collection of Levels B and C data are not mandatory, timely reporting of these data when they are collected is considered to be an important indicator of cooperation with NMFS and the Network. We believe that network participants that are unresponsive or habitually do not cooperate with NMFS or other network members are not operating ''in good standing'', therefore these criteria remain in the modified description.

Comment 17: Two commenters asked why the Northwest Region appeared to apply more restrictive criteria for eligibility than other regions.

Response: The Northwest Region Stranding Network is composed of cooperating scientific investigators and institutions, volunteer individuals and organizations, wildlife and fisheries agencies, and enforcement agencies. The documentation of their participation as members of the Network was initially provided in the Northwest Region Marine Mammal Stranding Network Handbook in the early 1980s. After approximately 15 years of cooperative effort, the participants that remained active were included in the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events in 1996. To date, no LOAs have been issued in the Northwest Region for Network participants that are not otherwise authorized directly, pursuant to Section 109(h) of the MMPA (Federal, state, and local authorities), and the most recent formal documentation of participation, as a cooperating organization, is the 1996 Contingency Plan. However, since 1996, several organizations named in the contingency plan have resigned or otherwise become inactive. Therefore, to identify those participants that are continuing to provide response and data collection services for the Network, it became necessary to include recent participation as performance criterion. The 2001/2002 Contingency Plan is under review internally and will be available shortly. The new Plan identifies participants active since 1996, while removing participants that are no longer active. Once completed and available, the updated Contingency Plan will be used to identify the Northwest Region's active Network participants.

Comment 18: One commenter asked whether all applicants have to be participants in the MMHSRP to be eligible for the Prescott Stranding Grant Program.

Response: Yes, LOA holders and other Network participants described as ''in good standing'' and, therefore, qualified as applicants for the Stranding Grant Program are participating in the MMHSRP. The Marine Mammal Health and Stranding Response Program, described in the Background section of this document, was established under the 1992 Amendments to the MMPA. The legislative history of the MMHSRP indicates it was developed to direct and supplement the existing stranding network to improve the Network's ability to determine the reasons for marine mammal stranding events, particularly unusual events. Although prior to the 1992 Amendment, the Secretary of Commerce was responsible for authorizing people to respond to marine mammal strandings, the MMHSRP provided the Secretary with more explicit guidance on administration of the Stranding Network.

Comment 19: Two commenters questioned the restriction of the eligibility criteria relating to state and local government response to cetacean strandings without justification for excluding pinnipeds.

Response: This restriction was originally intended to reduce the potential for local governments that rarely or inconsistently participate in the stranding network from applying for funds under the Prescott Stranding Grant Program, while allowing those local agencies that are vital network members to participate. The criteria has now been modified to require MMPA 109(h) applicants to be ''in good standing'' and active in recent years, allowing pinniped response groups to participate, if they qualify.

Comment 20: One commenter asked whether researchers and organizations outside of the US would be eligible for Prescott Stranding Grant Program funds, particularly for response to mortality events that may have been caused by US activities.

Response: No. The Marine Mammal Rescue Assistance Act and its legislative history clearly indicate that the purpose of this program is to provide some financial relief to active, volunteer, US stranding network participants that have been absorbing the costs of response to marine mammal strandings. There is no provision in the Act nor intention apparent in the legislative history, to provide funds to individuals or organizations that are not part of the U.S. stranding network.

Comment 21: One commenter suggested that, while there is some merit to discouraging the development of new facilities that may be capitalizing on this new granting opportunity, the Prescott Stranding Grant Program may discourage the construction of new facilities where they are needed.

Response: Explicit authorization would be required in the Prescott Stranding Grant Program to fund major new construction projects. Additionally, Congressional intent expressed in the Act, its legislative history, and subsequent clarification from authors of the statute, indicate that the funds are not for new construction or new participation. The purpose of the Prescott Stranding Grant Program is to provide funds for existing facilities and active stranding network participants. A new member of the Network, therefore, may not be eligible to apply for these funds during this grant cycle. However, once they have become active network participants, they may become eligible in future grant cycles.

Comment 22: One commenter indicated that the Alaska Native exemptions under the MMPA allowed marine mammal takes for subsistence and for creating and selling authentic

handicrafts or clothing, and allowed the Secretary of Commerce to enter into a cooperative agreement with Alaska Native organizations to conserve marine mammals and to provide co-management of subsistence use by Alaska Natives. Therefore, the commenter suggested that there might be active, trained Alaskan Native participants of the marine mammal stranding program that do not work under an LOA. If an LOA will be necessary to qualify for funding opportunities under the Prescott Stranding Grant Program, applicants should be allowed to obtain authority after the award is granted.

Response: The Alaskan Native exemptions do not include authorization to respond to and collect materials from stranded animals as part of a specific stranding response; e.g. to fulfill Level B and C data collection protocols. Rather, under this exemption they can take marine mammals for subsistence or handicrafts. Currently, all Alaskan Natives that are responding to strandings and providing reports to the Regional Administrator are authorized under an LOA and are eligible for funding under this Program. The intent of the Program is to provide funds to the existing volunteer network. Therefore, individuals or organizations cannot apply for the funds before they are participating in the stranding network.

Priorities

Many comments were received that suggested concerns regarding the intent of the priority lists. To clarify: the purpose of the priority list is to guide applicants in proposal development by identifying those proposals that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. To this end, each region identified those priorities that will best ensure that the Prescott Stranding Grant Program is successfully implemented (by providing grants for the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes) in the manner that best helps the regions achieve the goals of the Marine Mammal Health and Stranding Response Program. To ensure that the goals of the Prescott Stranding Grant Program are met, including equitable distribution of funds, proposals will be pooled by regional or national aspect according to which priorities are addressed by the applicant. Proposals will then compete for funds within these pools. Technical reviewers that are applicants in one pool may be among the reviewers for applications from another pool.

Comment 23: Commenters indicated that the most critical funding areas are for equipment, supplies, and travel. They suggested that the agency appeared to be supplanting these critical needs with agency policy preferences, and indicated that each of these sets of interests should be addressed within this program.

Response: The priorities identified in the Draft Implementation Plan were developed under the categories designated in the Act establishing the Prescott Stranding Grant Program. We agree that they were selected to successfully implement the Program through the MMHSRP, which was established by Congress in the 1992 Amendments to the Marine Mammal Protection Act, in part, to guide the Agency on administration of the stranding network. The priorities have been reordered in this document to incorporate the operational cost projects into the two project categories identified in the Act: rescue and rehabilitation, and data collection. This reordering may reduce concerns expressed by the commenters that applicants for a grant for operational costs will receive low ranking. Actually, in this first funding cycle, we anticipate that 60 to 70 percent of the funds (depending on the number of eligible and complete applications and their federal costs) may be awarded for proposals for operational costs. Operational costs can include, for example; salaries, equipment for rehabilitation efforts, food for rehabilitating animals, water testing, water filtration upgrades, necropsy equipment, gasoline, computer equipment to track materials collected from stranded marine mammals, etc.

Comment 24: Three commenters indicated that the priorities appear to be geared more towards live marine mammal strandings, however the majority of stranding activities relate to dead marine mammals. One of the commenters specifically expressed concern about this apparent bias in the National and Southeast data collection priorities, and pointed out that since fewer than 15 percent of all Southeast marine mammal strandings are live, improved data collection efforts on all dead stranded marine mammals would be more cost effective than increasing efforts on the live strandings.

Response: Priorities are listed for both live and dead marine mammal strandings. No indication of an Agency preference exists or was intended. For the Southeast Region in particular, most of the data collection priorities listed apply to improved data collection from dead stranded marine mammals.

Comment 25: One commenter suggested that the funding priority list provided in the Draft Implementation Plan should be narrowed considerably to allow applicants to compete successfully for funds for ongoing activities to help defray the enormous cost of recovery and rehabilitation of stranded marine mammals rather than focus on the new or unmet research needs of NMFS.

Response: The priority list was developed to provide guidance to applicants on priorities that would successfully compete for funds by achieving the stated objectives of the Prescott Stranding Grant Program: ''the recovery or treatment of marine mammals, the collection of data from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operation costs that are directly related to those purposes.'' We have revised the priority lists to fold the priorities related to operational costs into the two categories of recovery or treatment, and data collection, to illustrate the integral need for funds for operational costs that support these two objectives.

Comment 26: One commenter suggested that priorities should include the recovery and collection of tissues (including equipment costs) from individual stranding events to establish a database of baseline information to compare against anomalous events.

Response: This recommendation is consistent with listed National Priorities, including participation in the National Marine Mammal Tissue/Serum Bank and establishing health reference data on species subject to unusual and mass strandings.

Comment 27: One commenter suggested that long-term (5–15 years) archival of tissues already takes place in a few stranding organizations and those should receive priority for data analyses.

Response: A proposal to conduct a collaborative, retrospective effort to analyze archived samples held by network participants would be consistent with a number of the listed priorities. Anyone interested in using tissues archived in the National Marine Mammal Tissue Bank should follow the tissue access policy published in the 1994 Marine Mammal Health and Stranding Response Program: Program Development Plan. This report can be found on NMFS Office of Protected Resources Reading Room Web page, at: *www.nmfs.noaa.gov/prot_res/*

readingrm/MMHealth/mmhealth.pdf, and the access policy can be found on pages 33 to 35. Alternatively, please contact the Office of Protected Resources (see CONTACT information) for a hard copy. Note that a new access policy is currently under review in NOAA and is anticipated some time in the next year, after grants have been awarded in this grant cycle.

Comment 28: In addition to the several health-related priorities outlined in the Draft Implementation Plan, one commenter believes it would be appropriate to also consider research projects dealing with basic aspects of life history (*e.g.,* age, growth and reproduction) and ecology (*e.g.,* feeding) of marine mammals, particularly those of the special concern (listed in B.2).

Response: Both the Act establishing the Prescott Stranding Grant Program, and the MMHSRP, prioritize research related to the health of marine mammal populations. Projects that collect life history information could be consistent with these statutory priorities if they are conducted to identify health trends or establish and interpret health reference data.

Comment 29: For species of concern, pooling of samples and research efforts should be encouraged to enable investigators to properly address ecological questions and health issues with an appropriate number of samples. Data and samples from Kogia, for example, exist in various locations which, if properly analyzed could provide information on diet, reproductive biology, and aging that would be crucial for successful rehabilitation and release of live-stranded animals.

Response: A collaborative project such as the one proposed could be competitive, and addresses the national priorities to identify health trends and establish health reference data.

Comment 30: Priority should be given also to rescue and rehabilitation of endangered and threatened species.

Response: Although strandings of listed species are relatively rare, these strandings usually do receive elevated response efforts. Because it is impractical to plan and maintain preparedness for rare events, we believe that establishment of a Network that effectively responds to all events may be the best way to ensure adequate response to a listed species stranding.

Comment 31: NOAA fisheries is already preparing a web-based national stranding database, and already has funding for right whale response, and the Unusual Mortalities Working Group, therefore these should not be listed as priorities for a grant.

Response: The right whale and Unusual Mortalities efforts are existing funded programs, and related priorities have been removed from the priority list. However, the priority related to a national stranding database has been modified to reflect its intent to encourage proposals to improve network members' data collection and input capabilities—for example to fund salary for a data management person for data entry for a network member, to upgrade computers, etc. The priority has been reworded to better identify this intent.

Comment 32: A commenter suggested that the National priority related to ''upgrading equipment for electronic access to the national stranding database * * *'' should be repeated as a Southwest Regional priority.

Response: This is not a regional priority for the funding year. However, an applicant from the Southwest can submit a proposal to upgrade equipment for this reason under the National Priority. That application would then compete for funds within the National pool rather than the Regional pool.

Comment 33: Priorities that are listed in multiple regions might be combined as national priorities, i.e., public education and the development of oil-spill responses.

Response: Because proposals will compete within regional or national ''pools'', depending on the priorities addressed, we have elected to keep overlapping priorities separated. The scope of the project, along with the applicant's statement regarding the priority addressed, will then determine which pool a proposal will compete within.

Comment 34: The impetus for the Program was to provide funds to those facilities that for years have been absorbing the rising costs of stranding response and rehabilitation. This should be listed in the National Priority sections, as the number one priority.

Response: We agree that recognition of the volunteer stranding network was the impetus for the development of the Prescott Stranding Grant Program. However, the Marine Mammal Rescue Assistance Act's objectives do not include awards for historical participation, nor are federal grants the appropriate mechanism for reimbursement of funds for prior year efforts. While reimbursing Network participants for past efforts is not listed as a priority for implementation of this Program, eligibility to compete for funds under this Program is based in large measure on past and continuing participation as an active Network member.

Comment 35: Priorities seem to impose the specter of additional work (research proposal to obtain grant funds) on long-time volunteer stranding network participants struggling to fund current operations related to their already significant responsibilities.

Response: The Prescott Stranding Grant Program is obviously not mandatory and is not intended to place additional requirements on network participants. The competitive application process is required by the Department of Commerce Federal Assistance funding policies. Note, though, that operations costs will be funded with a successful grant application, therefore network participants can receive funds for operational costs for the upcoming year.

Comment 36: There are no regional priorities to fund people and equipment to help network participants. The 1-year term precludes continued help in offsetting additional staff costs. Applicants and reviewers should have broader discretion and more flexibility regarding how to apply the priorities.

Response: Operational costs are a national priority and all of the regions list priorities that encompass equipment and salaries, though these may be identified by phrases such as ''enhance operations''. The Prescott Stranding Grant Program relies on annual appropriations, therefore we cannot provide assurances during this first funding cycle regarding the availability of funds in the future. We have revised and reordered these priorities to provide applicants with specific guidance, while allowing reviewers some discretion in assessing competitive applications.

Comment 37: A commenter suggested that priorities for methods or equipment should identify the conservation or management purpose.

Response: In this Request For Proposals, we have folded operational cost priorities into the two categories of ''Recovery, Treatment and Release'', and ''Data Collection''. Applicants for operational costs are directed to identify how those costs meet the needs identified under these priorities. For example, a proposal for funds to cover veterinary costs, animal food, pool filtration devices, and water quality tests should be justified by identifying how these costs relate to needs for treatment and recovery of the types and numbers of strandings anticipated for a particular facility. Alternatively, a proposal for necropsy equipment, vehicle costs, salary for a stranding technician, costs of serological analyses, and equipment upgrades to allow access and data entry capabilities for the national stranding database would be

justified under the Data Collection objective.

Comment 38: A commenter suggested that, in addition to the basic needs that should be funded by the Prescott Stranding Grant Program, substantial funds should also be provided to study the survival rates and ecological role of rehabilitated individuals once they are released.

Response: Monitoring the survival of released animals is listed as a National, Northeast (under their data collection priorities in the Draft Implementation Plan) and Alaska Region priority. While important, this is not considered a high priority for the upcoming year by the other regions.

Comment 39: One commenter asked for clarification regarding the lack of Northwest Regional priorities for recovery and treatment of marine mammals.

Response: Although the Northwest Region did not list priorities under the ''Recovery and Treatment'' category in the Draft Implementation Plan, their ''Facility Operations Costs'' priority list included enhancement of facilities and network operations related to handling and treating sick and injured marine mammals. In this document these priorities have now been folded into the ''Recovery, and Treatment'' category.

Comment 40: Under the ''recovery and treatment'' priorities list, one commenter suggests that the Northeast Region should add the formation of a committee or working group to review and recommend response to out of habitat situations.

Response: Currently, the NMFS National Coordinator consults with existing working groups, such as the Unusual Mortalities Working Group, the Pinniped or Cetacean Release Criteria consultants, or ad hoc groups that include experts on the species of concern, to develop proper response to out-of-habitat events. Funds for response, when necessary, have generally come from existing sources of money. Rather than requesting a proposal through the Prescott Stranding Grant Program for the formation of a regional committee, the National Coordinator will take the lead in formalizing this process if it becomes necessary.

Comment 41: A commenter suggested that the NMFS Northeast Regional priority related to outreach efforts in areas where humans and protected species overlap should not identify specific areas since there are many areas of concern, and should focus primarily on reducing effects on the population, versus reducing the subsequent need for rehabilitation.

Response: The Region intended that this priority invite proposals to reduce injuries currently caused by the effects of human interactions with marine mammals on or near breeding grounds, and particularly at rookeries. Reducing the need for rehabilitation is an appropriate primary goal under the priority category of ''Recovery, Treatment or Release'', but since the priority is not intended to be site-specific, rookery names are no longer listed. We agree that the overall goal should include reduction of the effects of human interactions on the health of marine mammal populations due to, for example, habitat loss or transmission of disease and nuisance behaviors from facilities to the wild.

Comment 42: One commenter suggested that we add *Erysipelothrix rhusiopathiae* to the list of priority diseases to be investigated in 2001–2002.

Response: The FY 2002 Conference Report (House Report 107–278) provides $150,000 for *Erysipelothrix rhusiopathiae* this fiscal year. Due to this special appropriation, we believe *E. rhusiopathiae* does not have to be included in the priorities for the Prescott Stranding Grant Program this year.

Comment 43: One commenter asked that priority be given to applications for data collection grants from smaller facilities in all regions, and another one asked that priority be given to smaller facilities for stranding response and live animal treatment.

Response: There is no indication of Congressional intent to constrict the ability for all network participants to compete equally for these funds, nor was it identified as a priority by all regions. However, the Southwest Region has determined that for their Region, applicants from smaller facilities will receive priority for stranding response and live animal treatment.

Comment 44: A commenter suggested that the Southwest Region's priority identified as ''conducting complete necropsies on dead California sea lions to determine the incidence of human interactions such as gunshot'' be changed to ''conducting complete necropsies, including histopathology on all marine mammals that die or are euthanized in marine mammal rehabilitation centers to determine cause of death or euthanasia'.

Response: The suggested modification is actually quite different from the stated priority. During this funding cycle, providing funds for necropsies on animals that die during rehabilitation efforts is not a regional priority; therefore, this priority has not been added to the Southwest Region's list. However, a request for funds to conduct ongoing procedures such as this one could be included in a proposal for operational costs under the Southwest's rescue and rehabilitation priority to enhance stranding response and live animal treatment in smaller facilities, if necropsies are conducted to provide information necessary to monitor and improve the effectiveness of treatment practices.

Comment 45: One commenter suggested that network participants that collect tissues and data be compensated for their efforts, rather than restricting compensation to those that are conducting analyses or research with the data or tissues.

Response: Applicants for projects that require input from other network participants are asked to include reimbursement costs to the LOA holder or Network member collecting materials from stranded marine mammals, and to include those network participants as Cooperators on their proposal.

Comment 46: A number of commenters stated that this program should not fund a national stranding workshop.

Response: This priority has been removed from the list because it was too similar to a procurement, which is an inappropriate application of this grant program.

Comment 47: A commenter suggested that protocol for response to individual live strandings and criteria for rehabilitation candidates should be developed to provide facilities with guidance regarding basic indicators of animals that can be successfully rehabilitated.

Response: Rehabilitation and release criteria, currently under development by the MMHSRP National Program staff, will address this need to some extent. In the interim, the NMFS National and Regional coordinators often call on an ad-hoc group of experts for advice on live stranding response. If further guidance is deemed necessary after release criteria are finalized, NMFS will establish another group of consultants to further develop a beach-triage protocol, such as that identified by the commenter. Funds from the Prescott Stranding Grant Program will not be needed to support this effort.

Comment 48: One commenter suggested that a priority to ''achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible along all U.S. coasts'' be added to the list of priorities in each region.

Response: This priority was added to the National Data Collection priorities,

and related regional priorities have been amended, to reflect this goal of the MMHSRP.

Comment 49: The Northeast Region priorities should include one similar to the first priority on the Southeast Regional list regarding enhanced collection and evaluation of human interaction evidence from stranded marine mammals.

Response: This priority has been added to the list of the priorities for the Northeast Region. Costs for training network members to detect and document human interaction evidence are requested for inclusion in the proposed budget.

Comment 50: One commenter suggested that expansion of this grant program to include sea turtles would be useful.

Response: The Prescott Stranding Grant Program was instituted as an amendment to the MMPA, and does not cover sea turtle stranding response.

Comment 51: One commenter asked for an explanation of ''cooperative projects * * * to achieve Marine Mammal Health and Stranding Response objectives'' as listed in the Northeast Regional priority 1.

Response: Marine mammal strandings are a valuable source of information and material for studies that support the MMHSRP goals, particularly when response includes in-depth necropsies and data or tissue collection. The value of each stranding event, particularly of fresh dead animals, can be maximized by reaching out to experts from a variety of backgrounds. With this priority, the Northeast Region is encouraging network members to submit proposals to conduct studies supporting MMHSRP goals through partnerships with a variety of experts, including some that may not be within the current network.

Comment 52: One commenter asked that we mention something directly related to necropsy sample archive/storage in the priority regarding archival of samples.

Response: Numerous published protocols exist regarding appropriate sampling methods for real-time analyses or for archival of samples for specific research purposes (genetic studies, development of health reference data, health trend monitoring, etc.). For example, sampling protocols are included in two publications posted on the NMFS Protected Resources Web site, at: *http://www.nmfs.noaa.gov/prot__res/readingrm/Protocols/pinnipednecro.pdf* and, *http://www.nmfs.noaa.gov/prot__res/readingrm/NIST4529.pdf.*

Comment 53: One commenter suggested that the development of greater capacity in existing rehabilitation facilities should be added to the priority for facility renovations in the Northeast Region.

Response: The priority for the Northeast Region has been broadened to ''Renovating rehabilitation space for marine mammals, to include expansion of holding capabilities within existing facilities.'' This priority includes facility improvements, as well as renovations that result in greater capacity, such as the addition, repair, or replacement of pools. The intent of the Prescott Stranding Grant Program, however, is not to fund the construction of entirely new facilities.

Comment 54: One commenter identified a study of the pox virus in seals and its effect on both survivability and releasability of these animals as a priority for the Northeast Region.

Response: Seal pox is an emerging problem in the Northeast Region, particularly with the recent increase in ice seal strandings. Although this is not one of the priority diseases for this funding cycle, a proposal to study this problem could be submitted under the national priority to evaluate the incidence and impacts of marine mammals diseases, which has been expanded to include diseases that effect survival of marine mammals. Note that a study that requires collection of animals from the wild or invasive procedures beyond those generally used to rehabilitate and release marine mammals may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits are in place. Information on permit requirements and applications procedures can be found at: *http://www.nmfs.noaa.gov/prot__res/PR1/Permits/pr1permits__types.html.*

Comment 55: One commenter indicated that priorities in the Northeast Region, and perhaps nationally, should include a study on the survivability of marine mammals that have been released after treatment for severe lung worm infections.

Response: Monitoring of released animals to evaluate success is a National, Northeast, and Alaska priority. Additionally, although a study of the effects of lungworm infections on survival of released marine mammals has not been listed as a specific priority disease for this funding cycle, a proposal to study this problem could be submitted under the expanded National priority to evaluate the incidence and impacts of diseases and conditions that affect survival of marine mammals. Note that a study that requires procedures beyond those generally used to rehabilitate and release marine mammals, such as measurements of dive profiles of recovering or rehabilitated animals, may require research or enhancement permits. Funds obligated prior to permit issuance may not be distributed until proper permits are in place. For information on permit requirements and applications procedures, call the NMFS Office of Protected Resources (*see* **CONTACTS**) or view the following Web site: *http://www.nmfs.noaa.gov/__res/PR1/Permits/pr1permits__types.html.*

Comment 56: One commenter suggested that establishing a native liaison in Alaska should be a priority to effectively bridge and conduct outreach between the stranding network and the many different cultures found along coastal Alaska, and to conduct outreach and increase awareness of and response to strandings.

Response: A proposal from a network member, or a group of network members, to establish this type of position could address the Alaska Region's priority to enhance stranding response throughout the state.

Comment 57: One commenter suggested that funds are needed to facilitate response to strandings in remote areas in Alaska due to the high cost for gasoline and other commodities in these areas.

Response: The priorities have been revised and re-grouped in this Request For Proposals. Under these revisions, a successful proposal for these funds could be submitted as operational costs under Alaska's priority to enhance stranding response in rural areas.

Comment 58: One commenter suggested that, if possible, samples should be collected from stranded marine mammals along the Alaska coastline for potential genetic analysis, contaminant analysis, parasite, pathology, and other studies.

Response: The Alaska Region's priority to improve level A data collection has been amended to encourage Level B and C data collection. A successful proposal that would result in increased sample collection following appropriate protocols would address this priority.

Comment 59: One commenter strongly supported the need to expand and support an ''infrastructure'' for a better stranding response in Hawaii, and suggested that this should be among the highest priorities for the Region.

Response: The priorities are not ranked, rather all of those listed for this grant cycle are high priority for each of the Regions. Note that this priority has been revised to reflect the need to promote collaboration among network members in Hawaii.

Comment 60: Two commenters supported an addition to the Northeast Region's priority to enhance necropsy facilities, as well as other equipment and enhancements to improve level B and C data collection and scientific research.

Response: A priority has been added to the Northeast Region's list to ''Enhance necropsy facilities and other improvements to achieve consistent Level A data collection and encourage Level B and Level C data collection for dead strandings whenever possible.''

Comment 61: One commenter suggested that it was very important to improve the necropsy techniques of the stranding program in the Northeast Region.

Response: An application to develop training materials, acquire, or conduct necropsy training throughout the Northeast Region could be successfully submitted under the priority to encourage level B and C data collection. Travel funds for network participants should be included in the application, if possible.

Comment 62: One commenter indicated that the Southwest Region's priorities did not include facility operations costs, which should be explained.

Response: The Southwest and Southeast Regional operational priorities were mistakenly combined in the Draft Implementation Plan. The Southwest included 5 operational priorities, now folded into their Rescue and Rehabilitate priority list in this document.

Funding

Comment 63: One commenter asked whether NOAA/NMFS will consider partial funding for acceptable projects if more proposals meet funding criteria than money is available.

Response: Following the NOAA Grants process, after a project has successfully competed and been selected for funding, pre-award negotiations occur between the applicant and NOAA/NMFS representatives. This process can include agreements to partially fund projects that otherwise fall below the available funding level.

Comment 64: A number of commenters indicated that the Federal share of the grant is supposed to be $100,000, with an additional 25 percent for non-federal matching funds.

Response: We originally interpreted the Marine Mammal Rescue Assistance Act's language limiting the grant to $100,000 to be consistent with general grant principles that define a grant as including both the Federal and non-Federal share. However, after soliciting further clarification and reviewing the legislative history of the Act, we have determined that there is sufficient information to reveal Congressional intent to limit the Federal portion of the award, not the amount of the grant itself, to $100,000. We have changed the guidance in this document to reflect this new interpretation; the Federal (75 percent) portion of the grant will be up to $100,000 and the non-Federal match will be a minimum of 25 percent of the total grant amount. For a project for which 75 percent of the grant is the maximum $100,000 in Federal funds, a minimum of $33,334 in matching funds (25 percent of $133,334) would be required. Note that proposals can be submitted for projects costing more than $133,334, however the Federal share can be no more than $100,000.

Comment 65: One commenter asked that NMFS clarify that the non-Federal match can consist of in-kind services.

Response: The cost sharing discussion in the Draft Implementation Plan specifically stated that cost share requirements could be met with in-kind contributions and included a long discussion regarding in-kind contributions. This discussion has been repeated in this document, and it cites the Federal regulations regarding cost sharing requirements.

Comment 66: One commenter asked that NMFS explain the phrase '' * * * not required to award any specific grant or cooperative agreement, nor are we required to obligate the entire amount of funds provided.''

Response: This language is standard for Notices soliciting applications for discretionary Federal assistance funds. The language makes clear that the Notice does not infer entitlement rights to the funds to any applicant. The final selection decisions, funding amounts and project descriptions will be decided by NOAA.

Comment 67: Three commenters requested clarification or justification for the agency's decision not to fund any multi-year projects this year, despite the fact that many scientific research projects, particularly those relating to trends in marine mammal health, yield more beneficial results over time.

Response: Based on the guidance we have received regarding Congressional intent, we have decided to implement the Prescott Stranding Grant Program during this first funding cycle in a manner that broadly distributes the funds and that does not foreclose future options by obligating future funds that may be appropriated. Additionally, there is no guarantee that future funds will be available, since they depend upon annual appropriations from Congress. Therefore, for this grant cycle, we have decided not to fund projects that require funding obligations in future years. As noted in the Draft Implementation Plan and in this document, we will fund a project for up to 3 years if the Federal share of the project does not exceed $100,000 for the entire duration of the project. Additionally, if work will continue for some period after the money is obligated, the grantee may notify the grants manager and request a no-cost extension for the grant. We will revisit this policy for upcoming grant cycles, and foresee the possibility that multi-year proposals may be accepted in the future.

Comment 68: Two commenters suggested that recognition should be afforded for the applicant's efforts to value cost sharing portion of items, including in kind contributions.

Response: NMFS will follow the Federal guidelines regarding consideration of the valuation of cost sharing proposals, including in-kind contributions. These guidelines are summarized in the Draft Implementation Plan and in this Notice, and are detailed in the regulations found at 15 CFR 14.23 and 24.24. For successful applications, lingering questions regarding cost sharing can be resolved during the negotiations that follow selection of applications.

Selection/Review Process

Comment 69: A number of commenters asked how the funds will be equitably distributed among the Regions.

Response: Applications will compete regionally; that is, they will be reviewed, evaluated, and ranked on a regional or national basis depending on the priority addressed by the applicant. As discussed in the implementation plan, once an evaluation has been conducted, MMHSRP staff, with input from the NMFS Regional Administrators and Office Directors, the Marine Mammal Commission, and the USFWS, will develop recommendations for equitable distribution of the Prescott Stranding Grant Program funds among the NMFS stranding regions. Justification for distribution will consider recent strandings statistics, including the occurrence of episodic events such as El Nino, as well as anomalous stranding events and recent unusual mortality events. The Assistant Administrator for Fisheries will review the recommendations and comments of the review team and ultimately determine the projects to be funded.

The distribution formula chosen this year may be revised in future funding cycles. Qualified applications during the year to address unanticipated catastrophic events, such as mass strandings, will be funded non-competitively, likely on a first-come first-serve basis.

Comment 70: One commenter indicated that the success of the proposal at addressing listed priorities did not appear to be considered in the ranking and scoring criteria.

Response: The initial screening process will ensure that only applications that are qualified, which include those that address the listed priorities, receive further review by technical reviewers. Additionally, the guidance to technical reviewers includes consideration of soundness of project design, which as described include consideration of how the project achieves the goals of the MMHSRP and the Prescott Stranding Grant Program.

Comment 71: One commenter suggested that a 10 percent criteria be added to consider how well the proposed study builds collaboration and/or extends the capabilities of the program or project.

Response: We recognize and encourage collaborative efforts, particularly for data collection projects, and have included collaboration as a factor to be considered by technical reviewers when weighting experience and qualifications of personnel. In future years, we will consider adding a weighting criteria for collaboration such as the one suggested

Comment 72: One commenter requested clarification regarding two aspects of scoring, ranking, and selection guidance in the draft implementation plan; noting that the ''acceptable technical score'' appeared to be arbitrary and unspecified; and questioning the meaning of the statement that awards may not be made to all of the highest technically ranked applications. The commenter suggested that the applications should be ranked, redundant applications with lower scores should be removed from the list, and then all funds should be distributed down the ranks until funds are depleted.

Response: To ensure that Federal funds administered through grants programs are distributed responsibly, we have established a minimum standard that must be met for an application to be considered for funding. Commonly, only applications for Federal funds that receive excellent or very good scores from peer reviewers are further considered for funding, or alternatively, numerical standards are established based upon the historical scores and rankings of applications received during previous grant cycles for a particular program. Because the Prescott Stranding Grant Program has no previous grant cycle to draw upon, we have selected a minimum standard of 60 percent, similar to that used academically to denote a failing grade. This 60 percent cut-off is identified in the first paragraph of the Technical Evaluation section in the Draft Implementation Plan. Applications that cannot achieve a minimum score of 60 percent will not be considered for funding during this funding cycle, and applicants will receive a summary of comments from the panel and review teams.

The statement that not all of the highest technically ranked applications may be awarded grants reflects standard NMFS grants language when a selecting official reserves the discretion to use policy factors to make final agency funding decisions. The Assistant Administrator is the Selecting Official for the Prescott Stranding Grant Program, and final selections are essentially at his discretion, within the constraints identified in this document. In this case, the Selecting Official can deviate from panel ranking recommendations, even if an application has received a high ranking, if he has policy concerns about costs, need, geographical distribution of projects, duplication with other federally funded projects, or equitable distribution of funds among the regions. However, any deviations from panel recommendations must be justified in writing and based on the policy factors that are identified in the notice.

Comment 73: One commenter suggested that we include a participant from the Working Group for Marine Mammal Unusual Mortality Events in the grant review and selection process to ensure the working group's concerns are represented.

Response: Past and present members of the Working Group will be among those asked to participate on the technical review panel.

Comment 74: One commenter suggested that at least one member of the panel should be an individual from a marine mammal rehabilitation center in a managerial position and intimately involved in the day-to-day activities of animal care and treatment, and suggested this should be noted in our discussion of the review panel process.

Response: We will be contacting dozens of individuals from varied organizations, including network participants, rehabilitation facilities, government managers and scientists, academics, and constituent groups, to ask them to volunteer to participate as technical reviewers of Prescott Grants proposals. The total number of reviewers that will be selected depends on the number of volunteers, the number of applications that come in, and the priorities addressed on those applications. At least two panels will be necessary, to divide west coast, east coast, and headquarters proposals into 2 review pools. Reviewers will be assigned to each panel in a manner that prevents conflict of interest (for example, applicants will not be able to review other applications within their competitive pool), and that applies reviewers' areas of expertise appropriately. Given these goals, while it is likely that panelists will include reviewers that are senior staff at rehabilitation facilities, we cannot require nor ensure that this will be the case.

Comment 75: One commenter expressed concern that the initial ''regional review of proposals'', rather than the simultaneous coordinated review indicated in the law, could unfairly or inconsistently preclude meritorious proposals from the review mandated by Congress.

Response: NMFS grant procedures require an initial review of proposals for completeness of applications, and to determine whether the minimum program and eligibility requirements are met. The initial review will not include determinations regarding the merits of the proposals beyond whether or not the proposal addresses one of the priorities established for this grant cycle. Note that in this document, we have increased the period allowed for application preparation beyond that forecasted in our original timeline. We encourage applicants to apply early so that problems found during these initial reviews, such as incomplete forms, can be resolved prior to the end of the application period. Note that we are under no obligation to do these early reviews, however, and insufficient time and resources may preclude our ability to return early proposals for completion.

Comment 76: One commenter indicated that the screening and evaluation process should closely track the three important activity areas identified by Congress so as not to discourage applications for less lofty but much needed existing stranding efforts.

Response: In the Draft Implementation Plan, the priorities listed for the Prescott Stranding Grant Program were listed under the three categories identified by Congress. The priorities have been revised in this document by folding the operational

priorities into the rehabilitation and release, and data collection categories. This reordering, as well as many of the responses to comments in this section, should more explicitly illustrate our interest in receiving proposals for operational costs that support ongoing stranding network efforts. Our guidance to technical reviewers includes weighting factors that favor proposals that are consistent with these listed priorities.

Comment 77: One commenter suggested that reviewers should be made familiar with the specific exemptions under the MMPA for coastal Alaska Natives.

Response: We will ask all technical reviewers to read this document completely prior to reviewing applications. The discussion of the Alaska Native exemptions in the comments and responses will provide them with important background for reviewing Alaskan proposals.

Application

Comment 78: One commenter indicated that the grant application forms are not well designed for this program, and included irrelevant fields and insufficient space to describe the proposed project. A template would be useful.

Response: The Federal grants process requires submission of a number of forms, that are currently generic. Very few specialized forms exist for specific grants programs, however, one can be developed for the Prescott Stranding Grant Program. Once developed, the form must be reviewed and approved by the Office of Management and Budget to be consistent with the Paperwork Reduction Act. The development, public review, and approval of a specialized form may take up to 2 years. Depending on the administrative demands of implementation of the Prescott Stranding Grant Program, we will look into modifying these forms in the upcoming year.

Section III D. of this document provides an outline for the project description, which can be up to 10 pages long and is an attachment to the application form, not a section of the form.

Some assistance in filling out the required forms and in avoiding common problems can be found at the NOAA Grants homepage, specifically, at: *http://www.rdc.noaa.gov/grants/index.html.* We have also posted an application package, as well as a mock application, and questions and answers related to applications for the Prescott Stranding Grant Program on our Web site at: *http://www.nmfs.noaa.gov/prot__ res/PR2/Health__and__Stranding__Response__Program/Prescott.html.*

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Furthermore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

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.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Dated: January 4, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–783 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123101A]

Marine Mammals; File No. 482–1653

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that James Gilbert, Ph.D., University of Maine, Department of Wildlife Ecology, 210 Nutting Hall, Orono, Maine 04469 has been issued a permit to take harbor seals (*Phoca vitulina*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On November 14, 2001, notice was published in the **Federal Register** (66 FR 57041) that a request for a scientific research permit to take harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 4, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–886 Filed 1–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

National Reconnaissance Office

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–4

SYSTEM NAME:

Freedom of Information Act and Privacy Act Files.

SYSTEM LOCATION:

Management Services and Operations, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit Freedom of Information Act (FOIA), Privacy Act, and Mandatory Declassification Review Requests and administrative appeals to the National Reconnaissance Office; individuals whose requests and/or records have been referred to the NRO by other agencies; and in some instances includes attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the NRO personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of records created or compiled in response to FOIA, Privacy Act, and Mandatory Declassification Review requests and administrative appeals and includes: The original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal; and documents submitted for pre-publication review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations to implement the provisions of 5 U.S.C. 552, The Freedom of Information Act and 5 U.S.C. 552a, as amended, The Privacy Act of 1974; National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; E.O. 12333; E.O. 12958; E.O. 12968.

PURPOSE(S):

This system is maintained for the purpose of processing access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act, and requests and administrative appeals for Mandatory Declassification Review under the applicable executive order(s) governing classified national security information; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the NRO in carrying out any other responsibilities under the FOIA, the Privacy Act, and applicable executive orders; and to process requests for pre-publication review case processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system maintained in computers and computer output products.

RETRIEVABILITY:

Requester's name, request case number and subject keywords.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to the Information Access and Release Center staff whose official duties require such access. The electronic database files are password protected; hardcopy records are stored in a locked file room with restricted access.

RETENTION AND DISPOSAL:

Records are temporary, to be destroyed when two years old or sooner if no longer needed for administrative use. Records pertaining to FOIA and PA appeals are to be destroyed six years after final determination or six years after the time at which a requester could file suit, or three years after final adjudication by courts, whichever is later. Computer files will be deleted; hardcopy files will be shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Management Services and Operations, Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, and any aliases or nicknames, address, Social Security Number, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state)

under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the FOIA, the Privacy Act, or the applicable executive orders governing classified national security information; the agency records searched in the process of responding to such requests and appeals; NRO staff assigned to handle such requests and appeals; other agencies or entities that have referred to the NRO requests concerning NRO records, or that have consulted with the NRO regarding the handling of particular subjects; and submitters or subjects of records or information that have provided assistance to the NRO in making access or amendment determination. Pre-publication materials submitted by the authors or offices sponsoring the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the processing of a FOIA/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the National Reconnaissance Office hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–614 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–21

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Office of Security, Personnel Security Division, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military and contractor personnel who have been nominated or investigated for security clearances and program accesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, agency identification number, employee's geographic work location, employer, work telephone number, date and place of birth, home address and home telephone number, dependents' names, individual's background investigation and polygraph data, interview and adjudication information, all other information such as that found on standard government forms SF 86 and 1879, appeal and referral data, program access status, classification number, security file location, and administrative and investigatory comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301 Departmental Regulations; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

PURPOSE(S):

The information is used for granting security program accesses to NRO personnel; to maintain, support, and track personnel security administrative processing; to provide data for day-to-day security functions; and to conduct security investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To contractors and other Federal agencies for purposes of protecting the security of NRO installations, activities, property, and employees; to facilitate and verify an individual's eligibility to access classified information; and to protect the interests of National Security. Disclosure must be approved in writing by the NRO Director of Security or his/her designee.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, Social Security Number, agency identification number, employer,

employee's geographic work location, date and place of birth, and administrative comments.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, retained for 15 years after inactivation; noteworthy files are retained for 25 years after inactivation. Audio and video tapes of polygraph examinations and interview are temporary and are re-used or destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security Division, Office of Security, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–615 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 13, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 4, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–19

SYSTEM NAME:

Customer Security Services Personnel Security Files.

SYSTEM LOCATION:

Management Services and Operations, Customer Security Services, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractor candidates nominated for security clearances and program accesses but do not have an organizational security infrastructure to support their applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employer, work telephone number, date and place of birth, home address, home telephone number, foreign travel and foreign contacts as well as the other categories on the Standard Form 86 and the signed non-disclosure agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to nominate candidates for security clearances and program accesses; to record agreements to protect classified information; and to report foreign travel and foreign contacts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To corporate sponsors and other Federal agencies for purposes of facilitating and verifying an individual's eligibility for access to classified information.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Individual's name and Social Security Number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are temporary, retained for 15 years after the last action in the file. Noteworthy records are temporary, but must be retained for 25 years after the last action in the file. The non-disclosure agreements are temporary records retained for 70 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Customer Security Services, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature.

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by other security documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 02–673 Filed 1–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office

of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2002.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 9, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Infants and Toddlers with Disabilities Program (Part C) of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 168.

Abstract: States are required to submit an application to receive funds. An approved application remains in effect until modifications are needed resulting from a change in policy, procedures, or assurances.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her Internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–851 Filed 1–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States of America, and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the joint determination by the Government of the United States of America, and the Government of the Republic of Korea pursuant to Article VIII(C) of the Agreement for Cooperation that the provisions in Article XI of that Agreement may be effectively applied for the alteration in form or content of U.S.-origin nuclear material contained in irradiated nuclear fuels from pressurized water reactors, CANDU reactors, and research reactors at the Post Irradiation Examination Facility (PIEF), the Irradiated Material Examination Facility (IMEF), and the DUPIC Fuel Fabrication Facility (DFDF) at the Headquarters of the Korea Atomic Energy Research Institute, in accordance with the plan contained in KAERI/AR–606/01 (KAERI/AR–583/00-rev.1) and KAERI/AR–607/01 (KAERI/AR–584/00-rev.1), with appendices, dated September 3, 2001. Any activities additional to the plan or changes in the equipment in the PIEF, IMEF, or DFDF will be reviewed by both parties to ensure the general consistency with the scope and objectives of this Joint Determination. Reference is made to the Joint Determinations signed by the Government of the United States of America and the Government of the Republic of Korea on March 29, 1996, and April 8, 1999, covering the same facilities and similar activities. These facilities continue to be acceptable to both parties pursuant to Article VIII(C) of the Agreement for the sole purpose of alteration in form or content of irradiated fuel elements for post-irradiation examination and for research, development, and manufacture of DUPIC fuel powders, pellets, and elements for the period ending March 31, 2007.

In accordance with section 131, of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than January 29, 2002.

Dated: January 8, 2002.

Trisha Dedik,

Director, Office of Nonproliferation Policy, National Nuclear Security Administration.

[FR Doc. 02–856 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 01–84–NG, 01–76–NG, 01–83–NG, 01–88–NG, 93–34–NG, 01–73–NG, 01–85–NG, 01–90–NG, 01–86–NG, 99–106–NG, 00–71–NG, 01–87–NG, 01–86–NG, 00–71–NG, and 01–89–LNG]

Office of Fossil Energy; Phibro Inc., Enron Canada Corp., Puget Sound Energy, Inc., Suncor Energy Inc., Wisconsin Public Service Corporation (Successor of Wisconsin Fuel & Light Company), Crestar Energy Marketing Corporation, Jonan Energy LTD. (Formerly Jonan Gas Marketing, Inc.), Energyusa-TPC Corp., The Consumer's Gas Company LTD., Sunoco Inc., The Consumer's Gas Company LTD., Boston Gas Company d/b/a KeySpan Energy Delivery New England; Orders Granting, Amending, Transferring and Vacating Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2001, it issued Orders granting, amending, transferring and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 7, 2002.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1744	12–5–01	Phibro Inc. 01–84–NG	400 Bcf	400 Bcf	Import and export natural gas, including LNG from and to Canada and Mexico, beginning on January 1, 2002, and extending through December 31, 2003.
1745	12–5–01	Enron Canada Corp. 01–76–NG	1,800 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2003.
1746	12–5–01	Puget Sound Energy, Inc. 01–83–NG	50 Bcf		Import natural gas from Canada, beginning on December 6, 2001, and extending through December 5, 2003.
1747	12–11–01	Suncor Energy Inc. 01–88–NG	127.66 Bcf		Import natural gas from Canada, beginning on January 1, 2002, and extending through December 31, 2003.
856–A	12–11–01	Wisconsin Public Service Corporation (Successor of Wisconsin Fuel & Light Company) 93–94–NG.			Transfer of long-term authority.
1736	12–12–01	Crestar Energy Marketing Corporation 01–73–NG.			Errata Notice: Correction of the term of authority to July 12, 2001, and extending through July 11, 2003.
1748	12–13–01	Jonan Energy Ltd. (Formerly Jonan Gas Marketing, Inc.) 01–85–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1749	12–17–01	EnergyUSA–TPC Corp. 01–90–NG	73 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2003.
1750	12–17–01	The Consumer's Gas Company Ltd. 01–86–NG, 99–106–NG, 00–71–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 1, 2002, and extending through December 31, 2002.
1751	12–19–01	Sunoco Inc. 01–87–NG	200 Bcf	400 Bcf	Import and export natural gas from and to Canada, beginning on February 2, 2002, and extending through January 31, 2004.
1637–A	12–26–01	The Consumer's Gas Company Ltd. 00–71–NG, 01–86–NG.			Order vacating blanket import authority.

ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1752	12–27–01	Boston Gas Company d/b/a/KeySpan Energy Delivery New England 01–89–LNG.	600,000 Mcf.	.....	Import of LNG from Canada, over a two-year term beginning on the date of first delivery.

[FR Doc. 02–857 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

(Eastern Washington Reinforcement)

Grand Coulee-Bell 500-kV Transmission Line Project

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: Bonneville intends to prepare an EIS on the proposed construction, operation, and maintenance of an 84-mile-long 500-kilovolt (kV) transmission line in Douglas, Grant, Lincoln, and Spokane Counties, Washington. The new line would start at Bonneville's Bell Substation in Spokane, and proceed west along an existing right-of-way for about 84 miles, terminating at the Bureau of Reclamation's existing Grand Coulee Switchyard at Grand Coulee Dam. The new line would be built mostly on existing right-of-way, and would replace an existing 115-kV wood pole line.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, Bonneville will prepare a floodplain and wetlands assessment as necessary to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

DATES: Written comments on the NEPA scoping process are due to the address below no later than February 11, 2002. Comments may also be made at EIS scoping meetings to be held on January 28, 29, and 30, 2002, at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS to Communications, Bonneville Power Administration—KC–7, PO Box 12999, Portland, Oregon, 97212. You may also call Bonneville's toll-free comment line at 1–800–622–4519; name this project, and record your complete name, address, and comments. Comments may also be sent to the Bonneville Internet address at *comment@bpa.gov.* To be placed on the project mail list, call 1–800–622–4520.

Comments may also be made at EIS scoping meetings to be held on Monday, January 28, 2002, 4 to 8 p.m., at Inland Northwest Wildlife Council Auditorium, 6116 N. Market Street, Spokane, Washington; Tuesday, January 29, 2002, 4 to 8 p.m., at Old Center School Building (Big Bend Community College), 317 Spokane Way, Grand Coulee, Washington; and Wednesday, January 30, 2002, 4 to 8 p.m., at Davenport Elementary School, 1101 7th Street, Davenport, Washington. At these informal open-house meetings, we will provide information, including maps about the project, and have several members of the project team available to answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Mark Korsness, Project Manager, Bonneville Power Administration—TNP–TPP–3, PO Box 61409, Vancouver, Washington, 98666–1409; toll-free telephone 1–800–282–3713; direct telephone 360–619–6326; or e-mail *makorsness@bpa.gov.* You may also contact Inez Graetzer, Environmental Coordinator, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon 97208–3621; telephone 503–230–3786; fax 503–230–5699; or e-mail *isgraetzer@bpa.gov.*

SUPPLEMENTARY INFORMATION: The proposed 84-mile-long 500-kV transmission line would replace an existing 115-kV wood pole transmission line that runs between Bonneville's Bell Substation in Spokane, Washington, and the Bureau of Reclamation's Grand Coulee Switchyard at Grand Coulee Dam. The new line would be located primarily in Bonneville's existing right-of-way corridor. It would be a single-circuit line for the first 75 miles out of Grand Coulee Switchyard and a double-circuit line for the last 9 miles into Bell Substation. The project is needed to increase reliability and to support current and future demand for electricity in Washington State and the Pacific Northwest. The transmission line corridor between Grand Coulee Switchyard and Bell Substation currently contains two 115-kV transmission lines on wood pole structures and three 230-kV transmission lines on two steel lattice structures. Together, these transmission lines can no longer efficiently move power from generation sources east of Spokane to load centers west of Spokane. Replacing one of the 115-kV lines with a 500-kV line would relieve the restricted ability to transmit electrical power along this corridor, provide for future growth, and enhance service reliability to the community and the Pacific Northwest.

This proposed project was originally considered in 1993–1994 and was known as the Eastern Washington Main Grid Support Project. The proposal at that time was to build a double-circuit line between Bell Substation and Grand Coulee Switchyard, with the alternative being to build a single-circuit line. The project was scoped with the public, comments were incorporated into the proposal, environmental analysis was done, and a draft EIS was prepared to be released to the public when the project was cancelled for fiscal reasons.

Alternatives Proposed for Consideration. At this point the alternatives we are considering for evaluation in the EIS is the proposed action and the alternative of not building the line (an alternative we always consider). Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Issues. Bonneville has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help Bonneville ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or

potentially significant impacts that may result from the proposed project.

The potential environmental issues identified for most transmission projects include: land use, cultural resources, visual resources, sensitive plants and animals, erosion/soils, and fish and water resources. The scoping process will help identify the range of environmental issues that should be addressed in this EIS. When completed, the Draft EIS will be circulated for review and comment, and Bonneville will hold several public meetings to receive comments on the Draft EIS. Bonneville will consider and respond in the Final EIS to comments received on the Draft EIS. Bonneville's decision will be documented in a Record of Decision. The EIS will satisfy the requirements of NEPA.

Issued in Portland, Oregon, on January 4, 2002.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–893 Filed 1–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–328–002]

Algonquin LNG, Inc.; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 3, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, with an effective date of December 19, 2001:

Sub First Revised Sheet No. 42A

ALNG states that the purpose of this filing is to comply with the Commission's December 19, 2001 letter order in ALNG's Order No. 637 proceeding. Specifically, ALNG is establishing a mechanism that credits to its firm and interruptible customers the value of gas retained by ALNG in accordance with section 6.2 of the General Terms and Conditions of the FERC Gas Tariff.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–825 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–040]

ANR Pipeline Company; Notice Negotiated Rates

January 8, 2002.

Take notice that on January 3, 2002, ANR Pipeline Company (ANR) tendered for filing amendments to fourteen (14) service agreements that have previously been accepted as negotiated rate agreements.

ANR states that the amendments reflect (1) the inclusion of provisions allowing for maximum daily quantity changes associated with fuel use changes; and (2) revised exhibits effectuating a change in shippers' storage quantities under Rate Schedule FSS. ANR also notes that certain agreements have been amended and are no longer negotiated rate agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–823 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–127–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on December 20, 2001, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 21, 2002:

Fifth Revised Sheet No. 331
Original Sheet No. 331A

CIG states that the proposed tariff provision limits, under certain circumstances, the liability of a municipality in the event its utility defaults on its payment obligations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the

instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–827 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–136–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on January 3, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective February 1, 2002:

Tenth Revised Sheet No. 7
Fourteenth Revised Sheet No. 8
Eighth Revised Sheet No. 8A
Third Revised Sheet No. 8B
Third Revised Sheet No. 8C
Sixteenth Revised Sheet No. 9
Second Revised Sheet No. 13C
Second Revised Sheet No. 13D

CIG states the proposed tariff sheets are being tendered to include a volumetric tolerance level of 100 Dth on Hourly Unauthorized Overrun transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–830 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–70–004]

Columbia Gas Transmission Corporation; Notice of Filing

January 7, 2002.

Take notice that on December 21, 2001, Columbia Gas Transmission Corporation (Columbia) tendered its filing in compliance with the Commission's November 21, 2001 Order (November 21 Order) in the above referenced docket. In the November 21 Order, the Commission accepted for filing 159 service agreements filed pursuant to section 154.1(d) of the Commission's regulations. The Commission also approved the FirstEnergy contracts subject to certain conditions. In particular, the November 21 Order directed Columbia to make a compliance filing consistent with the terms of the November 21 Order within 30 days of the date of issuance of the order.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 10 G Street NE., Suite 580, Washington, DC; and has been sent by first-class mail, postage prepaid, by Columbia to Columbia's firm customers, interruptible customers, affected state commissions, and to each of the parties on the official service list in Docket No. CP01–70–001 and 002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–834 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–61–000]

Dominion Transmission, Inc.; Notice of Application

January 8, 2002.

Take notice that on December 28, 2001, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed an abbreviated application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity to abandon storage Well No. AW–3697 in the Fink-Kennedy/Lost Creek Storage Complex in Lewis County, West Virginia. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Storage Well AW–3697 is currently leaking a small amount of oil around the wellhead. DTI intends to plug the well to stop the leakage; thereby preventing the oil from being released and possibly increasing in the future. DTI claims the abandonment of the proposed facilities will have no significant impact on the environment. DTI will be using existing right-of-ways and access roads, and the appropriate erosion control and site restoration procedures.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or *sean_r_sleigh@dom.com*.

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 January 29, 2002,

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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 either to file comments or to intervene as early in the process as possible.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–817 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–006]

East Tennessee Natural Gas Company; Notice of Negotiated Rates

January 8, 2002.

Take notice that on December 31, 2001, East Tennessee Natural Gas Company (East Tennessee), tendered for filing a Firm Transportation Service Agreement and a Firm Transportation Rate Adjustment Agreement, attached as Appendices A and B to the filing, respectively, under Rate Schedule FT–A.

East Tennessee requests that the Commission grant all necessary waivers and accept for filing the Firm Transportation Service Agreement and Firm Transportation Rate Adjustment Agreement to be effective February 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–821 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–130–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on December 27, 2001, Eastern Shore Natural Gas Company, (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2002.

ESNG states that the purpose of the filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation under its Rate Schedules FSS and SST. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedule CFSS. ESNG states that the tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–828 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–19–000]

El Paso Electric Company; Notice of Application

January 8, 2002.

Take notice that on December 26, 2001, El Paso Electric Company submitted an application pursuant to section 204 of the Federal Power Act to make borrowing under a replacement revolving credit facility in an amount not to exceed $100 million, and to extend the maturity date of the first mortgage bonds relating to the revolving credit facility, and to engage in related transactions for the purpose of refinancing a revolving credit facility that provides up to $70 million for nuclear fuel purchases and up to $50 million (depending on the amount of borrowings outstanding for nuclear fuel purchases) for working capital needs.

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 January 18, 2002. 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 Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–819 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–003]

Gulfstream Natural Gas System, L.L.C.; Notice of Amendment to Certificate of Public Convenience and Necessity

January 7, 2002.

Take notice that on December 28, 2001, Gulfstream Natural Gas System, L.L.C. (Gulfstream), 2701 North Rocky Point Drive, Tampa, Florida 33607, filed in Docket No. CP00–6–003, an application pursuant to section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to Gulfstream on February 22, 2001 in Docket Nos. CP00–6–000, 001, CP00–7–000, 001 and CP00–8–000, 001, to amend the certificate and to request certain other authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance

Gulfstream states that it filed the original application for authorization to construct and operate 753 miles of new interstate gas transmission pipeline from various sources in Alabama and Mississippi to electric power generators and local utilities in the State of Florida (the Project) in the captioned docket on October 15, 1999.

Gulfstream states that the amendment requests authorization to (i) phase construction of its certificated pipeline facilities such that a portion of such facilities will be placed into service on June 1, 2002 (Phase I), with the remainder of such certificated facilities being placed into service on or about June 1, 2003, but not later than February 21, 2004, one year following the deadline for completion of the facilities set forth in the February 22 Order; (ii) modify its initial recourse rates to reflect such phasing of construction and to reflect changes in construction costs; and (iii) obtain related approvals. Gulfstream states that the amendment will facilitate construction of Gulfstream's pipeline system to meet growing demand for natural gas in central and eastern Florida.

Gulfstream states that it is requesting the Commission to grant the requested authorizations by March 31, 2002, so Gulfstream can complete its construciton of the Phase I facilities by June 1, 2002, to meet the in-service date requested by its Phase I shippers.

Any questions concerning this application may be directed to P. Martin Teague, Gulfstream Natural Gas System, L.L.C., 2701 North Rocky Point Drive, Tampa, Florida 33607, call (813) 282–6609.

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 January 28, 2002, 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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition

to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–833 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–137–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 8, 2002.

Take notice that on January 3, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective February 3, 2002.

Kern River states that the purpose of this filing is (1) to revise Kern River's pooling provisions to add new supply area and market area pools and to set forth a condition on deliveries from market area pools, and (2) to make other minor revisions in the Rate Schedules and General Terms and Conditions of Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket #'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–831 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–134–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

January 7, 2002.

Take notice that on December 27, 2001, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing a cost and revenue study.

Maritimes states that the purpose of the filing is to comply with: (1) Ordering Paragraph (M) of the Federal Energy Regulatory Commission's (Commission) certificate order dated July 31, 1998 in Docket No. CP96–178, *et al.* and (2) Ordering Paragraph (H) of the Commission's certificate order dated July 13, 2001, in Docket No. CP01–154–000. Maritimes & Northeast Pipeline, L.L.C., 84 FERC ¶ 61,130 (1998), and Maritimes & Northeast Pipeline, L.L.C., 96 FERC ¶ 61,077 (2001).

Maritimes states that copies of its filing have been mailed to all customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–838 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–17–001]

Pacific Gas & Electric Company and PG&E Corporation on Behalf of Its Subsidiaries ETrans LLC and Electric Generation LLC; Notice of Application

January 8, 2002.

Take notice that on December 21, Pacific Gas and Electric (PG&E) and PG&E Corporation, on behalf of its subsidiaries, ETrans LLC and Electric Generation LLC, submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment replaces PG&E's Statement of Cash Flows which contained an error.

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 January 29, 2002. 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 Web

at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–818 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–011]

Questar Pipeline Company; Notice of Negotiated Rates

January 8, 2002.

Take notice that on January 2, 2002, Questar Pipeline Company's (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 7, with an effective date of January 1, 2002.

Questar states that the filing tariff filing is being made to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–824 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–000, Docket No. CP02–58–000, and Docket No. CP02–59–000]

SCG Pipeline, Inc.; Notice of Application

January 7, 2002.

Take notice that on December 26, 2001, SCG Pipeline, Inc. (SCG), P.O. Box 102407, Columbia, South Carolina 29224–2407, filed an application for a certificate of public convenience and necessity and related authorizations pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's rules and regulations thereunder. SCG requests authorization for the following:

(i) A certificate of public convenience and necessity authorizing SCG to construct, install, and operate natural gas pipeline facilities in Georgia and South Carolina and to acquire capacity in certain facilities owned by Southern Natural Gas Company (Southern) also located in Georgia and South Carolina;

(ii) A blanket certificate of public convenience and necessity pursuant to part 284, subpart G of the Commission regulations authorizing the transportation of gas for others;

(iii) A blanket certificate of public convenience and necessity under part 157, subpart F of the Commission's regulations authorizing the construction, acquisition, and operation of certain facilities,

all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

SCG asks the Commission to issue a preliminary determination on non-environmental issues by April 1, 2002 and a final certificate order by October 1, 2002 so that SCG will be able to commence transportation services on November 1, 2003.

Any questions regarding SCG's application should be directed to Robert M. Apple, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South Carolina 29223 at (803) 217–1819 or by fax at (803) 217–2104.

SCG proposes to construct and operate approximately 18.14 miles of 20-inch diameter pipeline and appurtenant facilities extending from an interconnect with the Twin 30s pipeline system of Southern in Chatham County, Georgia and traversing through Effingham County, Georgia to a terminus in Jasper County, South Carolina.

In addition, SCG seeks authority to acquire from Southern an undivided ownership interest in 190,000 Mcf per day of capacity on Southern's Twin 30s pipeline system which consists of a two parallel 13.25 mile, 30-inch diameter pipelines extending from an existing interconnection with the liquefied natural gas (LNG) facility on Elba Island, Georgia owned by Southern LNG, Inc. to a proposed interconnect with SCG at Port Wentworth, Georgia. SCG states that it will acquire its undivided interest at a price determined by dividing 190,000 Mcf per day of capacity in the Twin 30s system by the total capacity of the Twin 30s system and multiplying by the net book value of the Twin 30s system as calculated at the time of the transfer. Southern has filed an abandonment application in Docket No. CP02–56–000.

SCG states that its project will have an initial capacity of 190,000 Mcf per day and that the capacity is fully subscribed under a precedent agreement with SCANA Energy Marketing, Inc. (SEMI). SCG states that SEMI will use most of the capacity to provide fuel for a proposed electric generating facility to be constructed by South Carolina Electric & Gas Company (SCE&G) in Jasper County, South Carolina. SCG states that SEMI will use the remainder of the capacity to serve various other firm and interruptible markets in the Southeast. SCG estimates that its proposed project will cost approximately $36.4 million.

SCG proposes to provide open access firm and interruptible transportation services under Rate Schedules FT and IT, respectively. SCG proposes to offer both negotiated and recourse rates and states that it has designed its proposed recourse rates using the straight-fixed variable method. SCG has submitted a

pro forma FERC Gas Tariff for Commission review.

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 January 28, 2002, 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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 either to file comments or to intervene as early in the process as possible.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–832 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–56–000]

Southern Natural Gas Company; Notice of Application

January 7, 2002.

Take notice that on December 26, 2001, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.14 of the Commission regulations for approval of Southern's abandonment of capacity by sale to SCG Pipeline, Inc. (SCG), all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

Southern proposes to abandon by sale to SCG an undivided interest in two parallel 30-inch diameter pipelines owned and operated by Southern equal to 190,000 Mcf per day of capacity from the tailgate of the liquefied natural gas facility of Southern LNG, Inc., on Elba Island in Chatham County, Georgia (LNG Facility) to an interconnection to be constructed with the pipeline facilities of SCG at Southern's meter station near Port Wentworth in Chatham County, Georgia (Twin 30s). Southern states that this sale of capacity in the Twin 30s is being proposed in conjunction with an overall project by SCG to construct a pipeline system from the LNG Facility to Jasper County, South Carolina, pursuant to an application SCG filed concurrently with the Commission in Docket Nos. CP02–57–000, CP02–58–000, and CP02–59–000.

Southern states that the capacity of the Twin 30s is approximately 1,250,000 Mcf per day and greatly exceeds the maximum daily vaporization rate of the LNG Facility. Further, Southern states that this demonstrates that even after the sale of 190,000 Mcf per day of capacity to SCG, Southern will still retain more than enough capacity on the Twin 30s for Southern to take the entire deliverability from the LNG Facility that its downstream facilities are capable of accepting. Southern states that it will continue to operate the Twin 30s.

Southern states that it intends to sell the capacity to SCG for the percentage equivalent represented by the amount of capacity being sold multiplied by the depreciated book value of the Twin 30s as of the first day of the month in which the closing occurs. Southern states that the current capacity of the Twin 30s is 1,250,000 Mcf per day and 190,000 Mcf per day or 15.2 percent of that capacity is being sold, so that is the percentage that will be multiplied by the book value to determine the purchase price. Southern proposes to reduce its net plant by the amount of capital received from its sale of capacity in the Twin 30s and that the reduction will be reflected in Southern's next Section 4 rate case.

Any questions regarding the application should be directed to Patrick B. Pope, General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7126.

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 January 28, 2002, 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 385.214 or 385.211) and the Regulations under the NGA (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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 either to file comments or to intervene as early in the process as possible.

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 under the ''e-Filing'' link.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–835 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–83–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 3, 2002, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Twelfth Revised Sheet No. 23A and Substitute Second Revised Sheet No. 23G, with an effective date of January 1, 2002.

Tennessee states that the filing is being made in compliance with the Commission's December 19, 2001 Letter Order, relating to the revised Gas Research Institute surcharges for 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–826 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–040]

TransColorado Gas Transmission Company; Notice of Compliance Filing

January 8, 2002.

Take notice that on January 2, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fortieth Revised Sheet No. 21 and Thirteenth Revised Sheet No. 22A, to be effective January 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect negotiated-rate contract revisions.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–822 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–133–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 8, 2002.

Take notice that on December 31, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 the following revised tariff sheets to become effective February 1, 2002:

Second Revised Volume No. 1

Forty-Fifth Revised Sheet No. 15
Twenty-Third Revised Sheet No. 15A
Forty-Sixth Revised Sheet No. 16
Twenty-Third Revised Sheet No. 16A
Forty-Fourth Revised Sheet No. 18
Twenty-Third Revised Sheet No. 18A
Twenty-Third Revised Sheet No. 19
Twenty-Third Revised Sheet No. 20
Fortieth Revised Sheet No. 21

Original Volume No. 2

Eighty-Ninth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 15, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–829 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–41–000, et al.]

PG&E Dispersed Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 8, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Power Corporation and RAMCO, Inc.

[Docket No. EC02–41–000]

Take notice that on January 4, 2001 PG&E Dispersed Power Corporation (PG&E Dispersed Power) and RAMCO, Inc. (RAMCO) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to consolidate certain jurisdictional facilities. PG&E Dispersed Power proposes to purchase 100% of the ownership shares of RAMCO. The jurisdictional facilities involved consist of RAMCO's market-based rate tariff, contracts, and books and records associated with the sale of wholesale power. RAMCO makes sales at wholesale of capacity, energy, and ancillary services from two 44 MW peaking generating plants interconnected with the transmission system subject to the operational control of the California ISO. Applicants have requested privileged treatment for the Stock Purchase and Sale Agreement between PG&E Dispersed Power and RAMCO.

A copy of this Application was served upon the California Public Utilities Commission and the Governor of California.

Comment Date: January 28, 2002.

2. ATCO Power Canada Ltd.

[Docket No. ER99–3282–004]

Take notice that on December 28, 2001, ATCO Power Canada Ltd, submitted for filing with the Federal Energy Regulatory Commission (Commission) a new market analysis and report of changes in status for ATCO Power Canada Ltd., formerly CU Power Canada Limited.

Comment Date: January 18, 2002.

3. Cleco Power LLC

[Docket No. ER02–686–000]

Take notice that on January 3, 2002 Cleco Power LLC (Cleco) filed a First Revised Service Agreement No. 50 under Cleco Power FERC Electric Tariff, Original Volume No. 1.

Comment Date: January 24, 2002.

4. FMF Energy, Inc.

[Docket No. ER02–687–000]

Take notice that on January 3, 2002, FMF Energy, Inc. (FMF) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of FMF 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.

FMF intends to engage in wholesale electric power and energy purchases and sales as a marketer. FMF is not in the business of generating or transmitting electric power. FMF is closely held corporation with no affiliates.

Comment Date: January 24, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–688–000]

Take notice that on January 3, 2002, the California Independent System Operator Corporation, (ISO), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and King City Energy Center, LLC for acceptance by the Commission. The ISO states that this filing has been served on

King City Energy Center, LLC 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 December 19, 2001.

Comment Date: January 24, 2002.

6. California Independent System Operator Corporation

[Docket No. ER02–689–000]

Take notice that on January 3, 2002, the California Independent System Operator Corporation, (ISO) , tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and King City Energy Center, LLC for acceptance by the Commission. The ISO states that this filing has been served on King City Energy Center, LLC 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 December 19, 2001.

Comment Date: January 24, 2002.

7. Virginia Electric and Power Company

[Docket No. ER02–690–000]

Take notice that on January 3, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement by Virginia Electric and Power Company to Conectiv Energy Supply, Inc., designated as Service Agreement No. 9, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001. Copies of the filing were served upon Conectiv Energy Supply, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of December 12, 2001, as requested by the customer.

Comment Date: January 24, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02–691–000]

Take notice that on January 3, 2002, Virginia Electric and Power Company (the Company) tendered for filing a Service Agreement for Short-Term Market Rate Electric Power Sales and the Resale of Transmission Rights with The New Power Company.

Under the Service Agreement, the Company will provide services to the customer under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Third Revised Volume No. 4), which was accepted by order of the Commission dated August 30, 2000 in Docket No. ER00–1737–001. The Company requests an effective date of January 1, 2002, as requested by the customer.

Copies of the filing were served upon The New Power Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: January 24, 2002.

9. Southern California Edison Company

[Docket No. ER02–692–000]

Take notice that on January 3, 2002, Southern California Edison Company (SCE) submitted a Letter Agreement between SCE and the City of Industry Public Utilities Commission (Industry).

The Letter Agreement provides for pre-interconnection activities including engineering, design, procurement and preparation of specifications. Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: January 24, 2002.

10. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–693–000]

Take notice that on January 3, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing an Amended and Restated Confirmation Agreement between Deseret and Utah Associated Municipal Power Systems (UAMPS) for a unit commitment service without reserves pursuant to Schedule B of the Western Systems Power Pool Agreement. Deseret requests an effective date of October 1, 2001. A copy of this filing has been served on UAMPS and counsel to the WSPP.

Comment Date: January 24, 2002.

11. Duke Energy Hot Spring, LLC

[Docket No. ER02–694–000]

Take notice that on January 3, 2002, Duke Energy Hot Spring, LLC (Duke Hot Spring) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hot Spring seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Hot Spring also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Hot Spring seeks an effective date of March 1, 2002, the date on which Duke Hot Spring anticipates commencing the sale of test energy.

Comment Date: January 24, 2002.

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–841 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 8, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 2210–073.

c. *Date Filed*: December 13, 2001.

d. *Applicant*: Appalachian Power Company (APC).

e. *Name of Project*: Smith Mountain.

f. *Location*: The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a) 825(r) and 799 and 801.

h. *Applicant Contact*: Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside

Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.fed.us.*

j. *Deadline for filing comments and or motions*: (February 16, 2002).

All documents (original and eight copies) should be filed with: Mr. Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–073) on any comments or motions filed.

k. *Description of Request*: APC is requesting Commission approval to permit to Windstar Properties, L.L.C. (permittee) to install and operate within the project boundaries: (a) One stationary dock with thirty-four covered boat slips; (b) one stationary dock with nineteen covered boat slips; (c) a 10,000 square foot sand beach; and (d) associated shoreline protection facilities. The work would also include the dredging and disposal of approximately 200 cubic yards of lakebed material. The facilities would be located at the Land's End subdivision located along the Blackwater River portion of Smith Mountain Lake.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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.gov* under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–820 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, Conditions, and Prescriptions

January 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License 5 Megawatts or Less.

b. *Project No.:* P–2835–005.

c. *Date filed:* October 27, 2000.

d. *Applicant:* New York State Electric & Gas Corporation.

e. *Name of Project:* Rainbow Falls Hydroelectric Project.

f. *Location:* On the Ausable River, within the townships of Ausable and Chesterfield, in Clinton and Essex counties, New York. This project does not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mrs. Carol Howland, Project Environmental Specialist, New York State Electric & Gas Corporation, Corporate Drive—Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224, or call (607) 762–8881.

i. *FERC Contact:* Jarrad Kosa at (202) 219–2831 or via e-mail at *jarrad.kosa@ferc.fed.us.*

j. *Deadline for filing comments, recommendations, terms, conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms, conditions, and prescriptions 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing Rainbow Falls Hydroelectric Project consists of: (1) A 19-acre reservoir having a gross storage capacity of 234 acre-feet at 310 m.s.l.; (2) a 19-foot-high by 435-foot-long concrete gravity dam having (i) 3-foot-high flashboards and (ii) a concrete 345-foot-long spillway between the dam abutments with an average height of 16 feet and an average width of 21 feet; (3) a 77-foot-long by 22-foot to 49-foot-wide forebay intake structure, and (4) a 20-foot-long by 16-foot-wide sluiceway section containing a gate well located at the west end of the spillway section; (5) a 260-foot-long by 25.5-foot-deep concrete power canal leading to (6) a stone rack house containing trash racks and rakes; (7) two 6-foot-in-diameter steel riveted penstocks extending 401 feet and 411 feet, respectively, from the rack house to a (8) 67-foot-long by 40-foot-wide reinforced concrete powerhouse, housing two 1,320-kW generating units for a total installed capacity of 2,640-kW; (9) a 200-foot-long, 2.3-kV transmission line; and (10) appurtenant facilities. The project has an annual average generation of

13,991,000 kilowatt-hour (kWh). The purpose of the project is to produce electric power generation for distribution on the licensee's transmission and distribution facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–836 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2516–026]

Allegheny Energy Supply Company, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2516–026.

c. *Date Filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Shepherdstown, in Berkeley and Jefferson Counties, West Virginia. The project dam and reservoir are owned by the United States and operated by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803 or *peter.leitzke@ferc.fed.us*.

j. *Deadline for filing additional study requests:* February 15, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Dam No. 4 Hydro Station Project consists of: (1) a 200-foot-long, 80-foot-wide headrace; (2) a stone and concrete powerhouse containing three generating units with a total installed capacity of 1,900 kilowatts; (3) a 350-foot-long, 90-foot-wide tailrace; (4) a substation; (5) a 4.5-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,886 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *MARYLAND STATE HISTORIC PRESERVATION OFFICER* and the *WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER,* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

- Notice of application has been accepted for filing
- Notice of NEPA Scoping
- Notice of application is ready for environmental analysis
- Notice of the availability of the draft NEPA document
- Notice of the availability of the final NEPA document
- Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–837 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–100–000, RT01–77–000, and RT01–75–000]

Regional Transmission Organizations, Southern Company Services, Inc., Entergy Services, Inc., et al.; Notice of Meeting on SeTrans RTO

January 7, 2002.

The SeTrans Sponsors [1] have invited the Commission to participate in a meeting that will be held on January 14, 2002 from 1 p.m. to 5 p.m. and January 15, 2002, from 8:30 a.m. to 4 p.m. The meeting will be held at the Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337. The purpose of the meeting is to form a Stakeholder Advisory Committee to assist the development of the SeTrans RTO. Representatives of the Commission's staff will attend the meeting. Members of the public may attend. Further information about the meeting and a copy of the registration form is available at *www.setransgrid.com.*

During the course of the meeting, it is possible that discussions may overlap with issues pending in the above-captioned dockets. A summary of any such discussion will be placed in each of the listed dockets, if appropriate.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–839 Filed 1–11–02; 8:45 am]

BILLING CODE 6717–01–P

[1] ''SeTrans Sponsors'' consists of Georgia Transmission Corporation, MEAG Power, Dalton Utilities, Entergy Corporation, South Mississippi Electric Power Association, City of Tallahassee, Jacksonville Electric Authority, South Carolina Public Service Authority, and Southern Companies.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–6]

Peer Review of EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction to Notice of Peer Review Workshop and public comment period.

SUMMARY: On January 2, 2002, the U.S. Environmental Protection Agency (EPA), Office of Research and Development (ORD) announced an external peer review workshop to review the revised draft document entitled, ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' (NCEA–1–0503) and a public comment period for this draft document (67 FR 75). The peer review workshop will take place on March 5 and 6, 2002, in Sacramento, California. The public comment period is January 9, 2002, to February 11, 2002. The deadline for registration is February 25, 2002. This notice corrects the address for electronic registration and electronic submission of comments provided in the January 2 **Federal Register** notice.

Correction to Addresses

To attend the meeting as an observer, please register with the Eastern Research Group (ERG), an EPA contractor. Please note that the registration Internet site provided in the January 2, 2002, **Federal Register** notice is incorrect. To register, send an e-mail request to ERG at *meetings@erg.com* (include name, affiliation, full address, phone/fax number, and e-mail address) or by calling the conference registration line at 781–674–7374 between the hours of 9 a.m. and 5 p.m. EST or via fax at 781–674–2906. You may also mail a registration request to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Please indicate when registering whether you plan to make observer comments.

Correction for Comment Submission

Please note that the e-mail address provided in the January 2, 2002, **Federal Register** notice is incorrect. Written comments should be submitted to ERG, Attn: Meetings, 110 Hartwell Avenue, Lexington, MA 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *meetings@erg.com.*

Dated: January 4, 2002.

Arthur Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–877 Filed 1–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–16]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fifteenth meeting of the Public Safety National Coordination Committee.

DATES: February 1, 2002 at 9:30 a.m.—12:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov.* Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov.*

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fifteenth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: February 1, 2002.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Address: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Report from the Technology Subcommittee.
5. Report from the Implementation Subcommittee.
6. Public Discussion.
7. Other Business.
8. Upcoming Meeting Dates and Locations.
9. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively,

the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fifteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at *jalford@fcc.gov.* Please provide your name, the organization you represent, your phone number, fax number and E-mail address. This RSVP is for the purpose of determining the number of people who will attend this fifteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov.* The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://www.fcc.gov/wtb/publicsafety/ncc.html.*

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 02–785 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–82–C (Auction No. 82); DA 01–2882]

Auction No. 82 Construction Permits for New Analog Television Stations Scheduled for February 5, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the Construction Permits for New Analog Television Stations scheduled for February 5, 2002.

DATES: Auction No. 82 is scheduled for February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Linda Sanderson, Auctions Operations Branch at (717) 338–2888. Media Contact: Meribeth McCarrick at (202) 418–0654. Video Services Division: Shaun Maher at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 82 Procedures Public Notice* released on December 13, 2001. The complete text of the *Auction No. 82 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 82 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of construction permits for new analog television stations (''Auction No. 82''). On November 9, 2001, in accordance with the Balanced Budget Act of 1997, the Mass Media Bureau (''MMB'') and the Wireless Telecommunications Bureau (''WTB'') (collectively, the ''Bureaus'') released the *Auction No. 82 Comment Public Notice*, 66 FR 58735 (November 23, 2001). This document sought comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 82. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 82. The Bureaus received four comments and no reply comments in response to the *Auction No. 82 Comment Public Notice.*

i. Construction Permits To Be Auctioned

2. The construction permits available in Auction No. 82 include four new analog television stations. These construction permits are the subject of pending, mutually exclusive short-form applications (FCC Form 175) and participation in this auction is limited to the applicants identified in Attachment A of the *Auction No. 82 Comment Public Notice.* The minimum opening bids and upfront payments for these construction permits are also included on Attachment A of the *Auction No. 82 Comment Public Notice.*

B. Rules and Disclaimers

i. Relevant Authority

3. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction No. 82 Procedures Public Notice*, the *Auction No. 82 Comment Public Notice*, the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with part 1, subpart Q of the Commission's rules concerning competitive bidding proceedings.

4. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all

prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

ii. Prohibition of Collusion

5. Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits short-form applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For further details regarding the anti-collusion rule, refer to the *Auction Filing Window Public Notice*, 66 FR 33699 (June 25, 2001), released May 25, 2001. For Auction No. 82, this prohibition became effective at the short-form application deadline (June 29, 2001) and will end on the down payment due date after the auction (to be announced in a future public notice). Applicants certified compliance with § 1.2105(c) when they signed their short-form applications. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

6. Bidders in Auction No. 82 are encouraged not to use the same individual acting as an authorized bidder for any other applicant. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm).

7. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

8. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment E of the *Auction No. 82 Procedures Public Notice.*

iii. Due Diligence

9. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the television facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

10. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 82 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 82 are strongly encouraged to continue such research during the auction.

11. Potential bidders should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the *Class A Report and Order*, the winning bidders in Auction No. 82, upon submission of their long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television stations proposed in this auction. Information about the identity and location of Class A television stations is available from the Mass Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mmb*) and on the Mass Media Bureau's Class A television Web page: *http://www.fcc.gov/mmb/vsd/files/classa.html.*

12. Potential bidders are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

13. Bidders for the Columbia, South Carolina, station on Channel 47 should note that there is pending a petition for rulemaking to change the DTV channel for WCSC–TV, Charleston, South Carolina, from Channel 52 to Channel 47. Pending the outcome of the Channel 47 Charleston DTV rulemaking proceeding, bidders for Channel 47 at Columbia are advised that the construction permit for their facility will be conditioned on acceptance of interference from WCSC–DT, Channel 47, Charleston, South Carolina.

iv. Bidder Alerts

14. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary

forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

15. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 82 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

16. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act (NEPA) Requirements

17. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

18. Auction No. 82 will begin on Tuesday, February 5, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

19. Auction No. 82—New Analog Television

iii. Bidding Methodology

20. The bidding methodology for Auction No. 82 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

21. These are important dates relating to Auction No. 82:

Auction Seminar—January 8, 2002
Upfront Payments (via wire transfer)—January 14, 2002; 6:00 p.m. ET
Mock Auction—January 31, 2002
Auction Begins—February 5, 2002

v. Requirements for Participation

22. Those wishing to participate in the auction must:

- Be listed on Attachment A of the *Auction No. 82 Procedures Public Notice.*
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. EST, January 14, 2002.
- Comply with all provisions outlined in the *Auction No. 82 Procedures Public Notice.*

vi. General Contact Information

23. The following is a list of general contact information relating to Auction No. 82:

General Auction Information

General Auction Questions, Seminar Registration, FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. EST.

Auction Legal Information

Auction Rules, Policies, Regulations, Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information

Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues, Video Services Division, (202) 418–1600.

Technical Support

Electronic Filing, Automated Auction System, FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10 p.m. EST, Saturday, 8 a.m. to 7 p.m., Sunday, 12 noon to 6 p.m.

Payment Information

Wire Transfers, Refunds, FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding

Will be furnished only to qualified bidders.

FCC Copy Contractor

Additional Copies of Commission Documents, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (e-mail).

Press Information

Meribeth McCarrick (202) 418–0654.

FCC Forms

(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html.*

FCC Internet Sites

http://www.fcc.gov, *http://wireless.fcc.gov/auctions*, *http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

A. Maintaining Current Information in Short-Form Applications (FCC Form 175)

24. As noted in the *Auction No. 82 Comment Public Notice*, and under 47 CFR 1.65, applicants have an obligation to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in short-form applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the short-form application. Auction No. 82 applicants may file changes to their FCC Form 175 applications by electronic mail sent to the following address: *auction82@fcc.gov*. The Bureau prefers that any attachments be in a Word or pdf format. Documents filed by electronic mail must include a subject or caption referring to Auction No. 82. Filers must also submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

25. A separate copy of the letter should faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

26. In addition, applicants should make these changes to their FCC Form 175 applications on-line after release of the public notice explaining the status of the applications.

B. Electronic Review of Short ''Form Applications (FCC Form 175)

27. As noted in the *Auction Filing Window Public Notice*, applicants may review their own and other applicants' completed FCC Form 175s after the FCC has issued a public notice concerning the status of the applications. The FCC Form 175 electronic review system will be available at that time, and may be used to locate and print applicants' FCC Form 175 information. Applicants will also be able to view other applicants' completed FCC Form 175 applications. There is no fee for accessing this system. Instructions for electronic review of FCC Form 175 applications will be discussed in a future public notice.

C. Installment Payments

28. Installment payment plans will not be available in Auction No. 82.

III. Pre-Auction Procedures

A. Application Processing and Minor Corrections

29. Before the auction seminar, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

30. As described more fully in the Commission's rules, after the short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

B. Auction Seminar

31. On January 8, 2002, the FCC will sponsor a free seminar for Auction No. 82 at the Federal Communications Commission, located at 445 12th Street, SW. (Room 3–B516), Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the broadcast service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

32. To register, complete Attachment B of the *Auction No. 82 Procedures Public Notice* and submit it by Friday, January 4, 2002. Registrations are accepted on a first-come, first-served basis.

Upfront Payments—Due January 14, 2002

33. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After the FCC Form 175 becomes available electronically, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. EST on January 14, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 82 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the January 14, 2002 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

34. Wire transfer payments must be received by 6 p.m. EST on January 14, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.

Receiving Bank: Mellon Pittsburgh.

BNF: FCC/Account # 910–0180.

OBI Field: (Skip one space between each information item).

''AUCTIONPAY''.

TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 12).

PAYMENT TYPE CODE (same as FCC Form 159, Block 24A; A82U).

FCC CODE 1 (same as FCC Form 159, block 28A: ''82'').

PAYER NAME (same as FCC Form 159, block 2).

LOCKBOX NO. # 358420.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

35. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 82.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

36. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction No. 82 Procedures Public Notice.* An electronic version of the FCC Form 159 will be accessible after the FCC Form 175 becomes available

electronically. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

37. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), the Commission ordered that ''former defaulters,'' i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.''

38. In the *Auction No. 82 Comment Public Notice*, we proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a construction permit, otherwise qualified bidders who applied for that construction permit on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time.

39. WyoMedia contends that the upfront payment for Scottsbluff, Nebraska should be reduced to between $41,000 and $46,000. WyoMedia provides community of license information for each permit in the auction and contends that parties interested in the Scottsbluff permit would be paying an upfront payment that is three times as much for other permits. WyoMedia urges the Bureaus to adopt an upfront payment that is consistent with those set for other permits. Based upon the information WyoMedia provides, we conclude that the upfront payment for Scottsbluff, Nebraska should be reduced to $50,000.

40. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 82 Procedures Public Notice.*

41. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

42. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, in conjunction with the selections made on the FCC Form 175.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

43. The Commission will use wire transfers for all Auction No. 82 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically after the FCC Form 175 becomes available for review. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by January 14, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank.
ABA Number.
Contact and Phone Number.
Account Number to Credit.
Name of Account Holder.
Taxpayer Identification Number (see below).
Correspondent Bank (if applicable).
ABA Number.
Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D.

C. Auction Registration

44. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

45. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

46. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Tuesday, January 29, 2002, should contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

47. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

D. Electronic Bidding

48. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, i.e., over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have

its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 82. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—can be specified on the FCC Form 175 during the resubmit window.

49. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

E. Mock Auction

50. All qualified bidders will be eligible to participate in a mock auction on Thursday, January 31, 2002. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

51. The first round of bidding for Auction No. 82 will begin on Tuesday, February 5, 2002. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

52. In the *Auction No. 82 Comment Public Notice*, we proposed to award all construction permits in a single, simultaneous multiple round auction. We received no comments on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the new analog television station construction permits through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on the construction permits in each round of the auction.

ii. Maximum Eligibility and Activity Rules

53. In the *Auction No. 82 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

54. For Auction No. 82, we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given construction permit.

55. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. A bidder is required to be active on 100 percent of their bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility.

iii. Activity Rule Waivers and Reducing Eligibility

56. In the *Auction No. 82 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers that may be used in any round during the course of the auction. We received no comments on this issue.

57. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

58. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating them from the auction.

59. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules (*see* Part IV.A.ii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

60. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open. Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

61. For Auction No. 82, the Bureaus proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when

one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all construction permits.

62. The Bureaus also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

63. The Bureaus further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if any remain).

64. In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the construction permits.

65. We received no comments on the subject, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 82 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 82, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

66. In the *Auction No. 82 Comment Public Notice,* we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

67. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

68. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the qualified bidders public notice referenced.

69. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

70. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.,* because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.

71. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of construction permits.

72. In the *Auction No. 82 Comment Public Notice,* the Bureaus proposed to establish minimum opening bids for Auction No. 82 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 82, the Bureaus proposed calculating the minimum opening bid based on the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. Three commenters challenged the minimum opening bids proposed for this auction. WyoMedia Corp. challenged the minimum opening bid for Scottsbluff,

Nebraska, asking that it be reduced to between $41,000 and $46,000. WyoMedia contends that those parties interested in the Scottsbluff permit would be paying a minimum opening bid that is three times as much for other permits. WyoMedia urges the Bureaus to adopt a minimum opening bid that is consistent with those set for other permit. Hubbard contends that $250,000 is a more reasonable value for the minimum opening bid for Pittsfied, Massachusetts. Powell Meredith requests that all, of the minimum opening bids be reduced since the costs of constructing new television stations have increased. We agree that minimum opening bids for Scottsbluff, Nebraska should be reduced to $50,000. However, we do not find that the commenters have justified reducing the minimum opening bids for other permits. Therefore only the minimum opening bids for Scottsbluff, Nebraska will be reduced.

iii. Bid Increments and Minimum Accepted Bids

73. In the *Auction No. 82 Comment Public Notice,* we proposed to use a smoothing methodology to calculate minimum acceptable bids. We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. We received no comment on this issue. We adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given construction permit between a maximum and minimum value based on the bidding activity on that construction permit. This methodology allows the increments to be tailored to the activity level of a construction permit, decreasing the time it takes for active construction permits to reach their final value. The formula used to calculate this increment is included as Attachment D of the *Auction No. 82 Procedures Public Notice.*

74. We adopt our proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureaus retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureaus will do so by announcement in the Automated Auction System. Under its discretion, the Bureaus may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureaus may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureaus also retains the discretion to use alternate methodologies, such as a flat percentage increment for all construction permits, for Auction No. 82 if circumstances warrant.

iv. High Bids

75. At the end of each round, the Automated Auction System determines the standing high bid for each construction permit based on the gross dollar amounts of the bids received for each construction permit.

76. In the case of tied high bids, a pseudo-random generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

77. During a bidding round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round.

78. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 82.

79. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

80. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

81. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

82. Once there is a standing high bid on a construction permit, the Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the *bid increment.* The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

83. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts for construction permits that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

vi. Bid Removal and Bid Withdrawal

84. In the *Auction No. 82 Comment Public Notice,* we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The one round in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comments on this issue.

85. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid''

function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.,* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we adopt these procedures for Auction No. 82.

86. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

87. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.,* reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 82, adoption of a limit on their use to one round is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in this auction.

88. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in this round. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a permit. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a ''place holder'' on the construction permit until a new acceptable bid is submitted on that construction permit

89. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

90. In the *Part 1 Fifth Report and Order,* the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

91. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 82 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

92. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

viii. Maintaining the Accuracy of Short-Form (FCC Form 175) Information

93. As noted in Part II.A., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554.

94. A separate copy of the letter should be faxed to Kenneth Burnley, Auctions and Industry Analysis Division, (202) 418–2923. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

I. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

95. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, down payments and any withdrawn payments due.

96. Within ten business days after release of the auction closing notice, each winning bidder must submit

sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credit). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

97. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each construction permit won through Auction No. 82. Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to the auction winners at the close of the auction.

C. Default and Disqualification

98. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

99. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 82 may be entitled to a refund of their upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

100. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Michelle Bennett, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

101. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Leora Hochstein,

Deputy Chief, Legal Branch, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–872 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting, Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 4:03 p.m. on Wednesday, January 9, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), and concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: January 10, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–1019 Filed 1–10–02; 3:26 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; Amendment No. 3 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 declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001: Holmes and Sharkey Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression

Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–804 Filed 1–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011742–001.

Title: P&O Nedlloyd-Farrell/Hapag-Lloyd/Zim Mediterranean Space Charter Agreement.

Parties: Farrell Lines, Inc. Hapag-Lloyd Container Linie GmbH. P&O Nedlloyd Limited. P&O Nedlloyd B.V. Zim Israel Navigation Co., Ltd.

Synopsis: The proposed agreement modification adds authority for the parties to discuss and agree on the phasing-in and phasing-out of vessels for maintenance and to discuss and agree on criteria to measure adherence to any agreed-upon schedule, as well as any remedial action in the event of non-adherence. The modification also clarifies the parties' authority to use common terminals and adds provisions dealing with force majeure situations, notices, and enforceability. The parties request expedited review.

Dated: January 9, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–845 Filed 1–11–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Edward T. Christian, trustee of Edward T. Christian Revocable Trust, Albert Lea, Minnesota; to acquire voting shares of Kiester Investments, Inc., Kiester, Minnesota, and thereby indirectly acquire voting shares of First National Bank of Kiester, Kiester, Minnesota.

Board of Governors of the Federal Reserve System, January 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–795 Filed 1–11–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0402]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement (OMB Control No. 0910–0378)—Extension

The third-party program under the United States/European (U.S./EC) Community/Mutual Recognition Agreement (MRA) is intended to implement that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices. Under the MRA, firms may apply to become designated as a U.S. Conformity Assessment Body (CAB). Firms who are designated will be qualified to conduct quality system evaluations for all classes of devices and product type examinations and verifications for selected devices based on EC requirements under the voluntary third-party program authorized by MRA. Firms designated as European Union (EU) CABs could conduct quality system evaluations for all classes of devices and premarket 510(k) evaluations for selected devices based on FDA requirements. Under the voluntary third-party program, reports of these evaluations would be submitted by the EU CABs to FDA. The EU CABs would also be required to maintain copies of their evaluation reports.

FDA requests approval of the following collection of information:

Requests for Designation as U.S. CABs—Under this program, U.S. companies were allowed to apply for designation as a U.S. CAB. Such designation enabled the company to perform third-party reviews of U.S. products for export to the EU and third-party audits of quality systems established by manufacturers of medical devices manufactured for export to the EU. Third-party review of U.S. products

for export and third-party audit of quality systems was elective and at the discretion of the manufacturer of the product. At the present time, only eight U.S. CABs are active. The agency is not accepting applications for U.S. CAB designation at this time and in the foreseeable future.

Premarket Reports by EU CABs—Under this program, EU CABs will be able to perform third-party evaluations for certain products manufactured in Europe for export to the United States. Third-party evaluation is elective and at the discretion of the manufacturer of the product.

Quality System Reports by EU CABs—Under this program, EU CABs will be able to perform third-party audits of the quality systems established by EU manufacturers of products manufactured for export to the United States. Third-party audit of quality systems is elective and at the discretion of the manufacturer of the product.

EU CABs must maintain records of their third-party evaluations of quality systems and premarket submissions for certain products manufactured for export to the United States for a period of no less than 3 years.

The program implements that part of the U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

In the **Federal Register** of October 5, 2001 (66 FR 51050), the agency requested comments on the proposed collection of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of Respondents	Annual Frequency perResponse	Total Annual Responses	Hours per Response	Total Hours
Premarket Reports by EC CABs	11	5	55	40	2,200
Quality System Reports by EC Cabs	11	15	165	32	5,280
Total					7,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Item	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Premarket Reports by EC CABs	11	5	55	10	550
Quality System Reports by EC Cabs	11	15	165	10	1,650
Total					2,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The following is an explanation of the burden estimate.

I. Reporting Burden

A. Requests for Designation as U.S. CAB

U.S. firms who have applied and have been accepted for designation as a U.S. CAB will be able to perform third-party evaluations of U.S. products for export to the EU. Likewise, European firms who have applied and been designated as EC CABs, will be able to perform third- party reviews of products to be exported to the United States. The application for nomination as an EU CAB does not represent a paperwork burden subject to the PRA because the designation procedure is an internal process that is required by, and administered by, European authorities. Only the application for designation as a U.S. CAB represents a paperwork burden under the PRA. However, the agency has received 10 applications for designation as U.S. CABs, 8 of whom are still active. The agency is not accepting any applications at this time, and does .not anticipate accepting any applications in the near future. Thus burden for U.S. CAB designation is nonexistent at this time.

B. Premarket Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party review for approximately 55 to 100 medical device products annually. The agency expects that interest and participation in the program will increase with time. The agency further estimates based on dialogue with EC officials, that 11 firms will be designated to act as EC CABs.

C. Quality System Reports

EU CABs are required to submit to FDA reports of their third-party evaluations. Based upon information gathered during the negotiation of the U.S./EC MRA, the agency anticipates that European manufacturers will request third-party audits for approximately 165 medical device products annually. The agency estimates that 11 EU CABs will perform these evaluations.

II. Recordkeeping

FDA requires the reviewers to keep in their records a copy of the report that they submit to FDA for each review. The agency anticipates that 55 premarket reports and 165 quality system reports will be generated and required to be maintained by EU CABs annually. The agency further estimates that each reviewer will require no more than 10 hours (2 hours per recordkeeping per report) for each to maintain such records annually.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–854 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0437]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Use—21 CFR Part 511 (OMB Control No. 0910–0017)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act) for approval of new animal drugs. Section 512(j) of the act (21 U.S.C. 360b(j)) authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). A sponsor must submit to FDA a notice of claimed investigational exemption (INAD) before shipping the new animal drug for clinical tests in animals. The INAD must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. The regulations in part 511 also require that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that distribution is controlled to prevent potential abuse. The agency utilizes these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are the persons who use new animal drugs investigationally.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	6	1,147	8	9,176
511.1(b)(5)	190	1.5	287	140	40,180
511.1(b)(6)	190	.005	1	250	250
511.1(b)(8)(ii)	190	.005	1	20	20
511.1(b)(9)	190	.16	30	8	240
Total					49,866

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record-keeper	Total Hours
511.1(a)(3)	190	7.5	1,434	9	12,906
511.1 (b)(3)	190	10	1,912	1	1,912
511.1(b)(7)(ii)	190	2	956	3.5	3,346
511.1(b)(8)(i)	190	4	956	3.5	3,346
Total					21,510

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e., the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: January 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–855 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0309, 01M–0342, 01M–0329, 01M–0381, 01M–0371, 01M–0412, 01M–0305, 01M–0337, 01M–0296, 01M–0310, 01M–0306, 01M–0307, 01M–0360, 01M–0380, 01M–0373, 01M–0392, 01M–0413, 01M–0414, 01M–0439]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on the Internet at http://www.fda.gov; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2001, through September 30, 2001, in accordance with the procedure explained previously. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2001, THROUGH SEPTEMBER 30, 2001

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P970056/01M–0309	Bausch & Lomb Surgical	KERACOR 116 Ophthalmic Excimer Laser System	September 28, 1999
P980044/01M–0342	Quintiles, Inc.	SUPARTZ Dispo	January 24, 2001
P000016/01M–0329	GE Medical Systems Information Technologies	Corometrics Model 120 F-Series Maternal/Fetal Monitor with Integrated Fetal Oxygen Saturation Monitoring, Corometrics Fetal Patient Module, and the Nellcor OXIFIRST FS14 Sensor	February 9, 2001
P000007/01M–0381	Edwards Lifesciences, LLC	EDWARDS PRIMA Plus Bioprosthesis Model 2500P	February 27, 2001
P990026/01M–0371	Cygnus, Inc.	GLUCOWATCH Automatic Glucose Biographer	March 22, 2001
P000032/01M–0412	CryoGen, Inc.	HEROPTION UTERINE CRYOBLATION THERAPY System	April 20, 2001
P930016(S12)/01M–0305	VISX, Inc.	STAR Excimer Laser System Models S2 and S3	April 27, 2001
P000005/01M–0337	MediTeam AB	CARISOLV Non-Invasive Dental Caries Removal System	June 27, 2001
P000043/01M–0296	TherMatrx, Inc.	TMx2000 BPH Thermotherapy System	June 29, 2001
P000021/01M–0310	Dade Behring, Inc.	DIMENSION RxL PSA Reagent Cartridge	July 5, 2001
P000041/01M–0306	Deus Technologies, LLC	RAPIDSCREEN RS–2000	July 12, 2001
P000026/01M–0307	STAAR Surgical Co.	AQUAFLOW Collegen Glaucoma Drainage Device, Model CGDD–20	July 12, 2001
P000055/01M–0360	Diagnostic Medical Systems	UBIS 5000	July 17, 2001
P830039(S7)/01M–0380	Medical CV, Inc.	OMNICARBON Cardiac Valve Prosthesis	July 26, 2001
P010015/01M–0373	Medtronic, Inc.	INSYNC Biventricular Pacing System including INSYNC Model 8040 Pulse Generator, ATTAIN LV Model 2187 and ATTAIN CS Model 2188 Leads	August 28, 2001
H010001/01M–0392	Avanta Orthopaedics, Inc.	Avanta Metacarpophalangeal (MCP) Joint Implant Finger Prosthesis	August 28, 2001
P010016/01M–0413	Ortec International, Inc.	ORCEL (Bilayered Cellular Matrix)	August 31, 2001

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2001, THROUGH SEPTEMBER 30, 2001—Continued

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P010023/01M–0414	SOUNDTEC, Inc.	SOUNDTEC Direct System	September 7, 2001
P000029/01M–0439	Q-Med AB	DEFLUX Injectable Gel	September 24, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 31, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–853 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0545]

''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax'' dated October 2001. The guidance document provides the current recommendations for assessment of donor suitability and product safety for donors potentially exposed to anthrax. The guidance document applies to Whole Blood, blood components (including recovered plasma) and Source Plasma collections intended for use in transfusion or for further manufacturing into injectable products.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Recommendations for Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Possible Exposure to Anthrax'' dated October 2001. The guidance document provides the current recommendations for assessment of donor suitability and product safety for donors potentially exposed to *Bacillus anthracis*, the agent of anthrax. The guidance document applies to Whole Blood, blood components (including recovered plasma) and Source Plasma collections intended for use in transfusion or for further manufacturing into injectable products. FDA developed the recommendations in the guidance document in consultation with other Public Health Service agencies and with the Blood Safety Committee of the Department of Health and Human Services. Recommendations addressed in the guidance include: Donor deferral, product quarantine and retrieval, and notification of prior transfusion recipients.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on recommendations for assessment of donor suitability and product safety for donors potentially exposed to anthrax. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, but is implementing this guidance document immediately because of public health concerns. Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: December 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–791 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA will recognize for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 006'' (Recognition List Number: 006) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written comments concerning this document at any time. See section VI of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of ''Modification to the List of Recognized Standards, Recognition List Number: 006'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the contact person (address below). Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed on FDA's Internet site at http://www.fda.gov/cdrh/fedregin.html. See section V of this document for electronic access to the searchable data base for the current list of ''FDA Recognized Consensus Standards,'' including Recognition List Number: 006 modifications, and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 156.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** ofFebruary 25, 1998 (63 FR 9561), FDA announced the availability of guidance entitled ''Recognition and Use of Consensus Standards.'' This notice described how FDA will implement its standards program recognizing the use of certain standards and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617); July 12, 1999 (64 FR 37546); November 15, 2000 (65 FR 69022); and May 7, 2001 (66 FR 23032), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. When these notices were published, the agency maintained ''html'' and ''pdf'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions were publicly accessible at the agency's Internet site. The agency maintains the current list in a searchable data base accessible to the public. See section V of this document for electronic access information.

II. Discussion of Modifications to the List of Recognized Standards, Recognition List Number: 006

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews for devices. FDA will incorporate these modifications in the list of ''FDA Recognized Consensus Standards'' in the agency's searchable data base. FDA will use the term ''Recognition List Number: 006'' to identify: (1) Supplementary information sheets for standards added to the list for the first time, (2) standards added to replace withdrawn standards, (3) still recognized standards for which minor revisions are made to clarify the application of the standards, and (4) standards withdrawn with no replacement.

At the end of this notice, FDA lists modifications the agency is making that involve: (1) The initial addition of standards not previously recognized by FDA and (2) the addition of standards in conjunction with the withdrawal of other standards that are replaced by these later, amended, or different standards.

In this section, FDA describes: (1) Modifications that involve the withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the addition of certain recognized standards with revisions to the supplementary information sheets involving changes in significant applications of the standards.

A. Anesthesia

1. In the supplementary information sheet for IEC 60601–3–1:1996–08, identified under previous item 11, a minor change is made to the contact person. This standard remains recognized and identified under current item 11.
2. In the supplementary information sheet for ASTM F1456–92, identified under previous item 24, a minor change is made to the contact person. This standard remains recognized and identified under current item 24.
3. In the supplementary information sheet for ASTM F1462–93, identified under previous item 25, a minor change is made to the contact person. This standard remains recognized and identified under current item 25.
4. In the supplementary information sheet for ISO 7767:1997, identified under previous item 32, a minor change is made to the contact person. This standard remains recognized and identified under current item 32.
5. In the supplementary information sheet for ISO 9918:1993, identified under previous item 33, a minor change is made to the contact person. This standard remains recognized and identified under current item 33.

B. Biocompatibility

1. ASTM F1904–98 is withdrawn under previous item 44. ASTM F1904–98e1 is added under current item 52.
2. ASTM E1372–95 is withdrawn under previous item 33. ASTM E1372–95 (1999) is added under current item 53.
3. ISO/AAMI/ANSI 10993–5:1998 is withdrawn under previous item 29. ANSI/AAMI/ISO 10993–5:1999 is added under current item 54.
4. ISO/AAMI/ANSI 10993–6:1995 is withdrawn under previous item 18. ANSI/AAMI/ISO 10993–6:1994 is added under current item 55.

C. Cardiovascular/Neurology

1. ASTM F138–97 is withdrawn under previous item 9. ASTM F138–00 is added under current item 34.
2. ASTM F562–95 is withdrawn under previous item 11. ASTM F562–00 is added under current item 35.
3. ASTM F136–98 is withdrawn under previous item 23. ASTM F136–98e1 is added under current item 36.
4. IEC 60601–2–23:1993 is withdrawn under previous item 26. IEC 60601–2–

23 (1999–12) is added under current item 37.

5. IEC 60601–2–34 (1994–12) is withdrawn under previous item 27. IEC 60601–2–34 (2000–10) is added under current item 38.

6. ASTM F647–94 is withdrawn under previous item 31. ASTM F647–94 (2000) is added under current item 39.

D. Dental/ENT

1. In the supplementary information sheet for ISO 7494:1996, identified under previous item 74, a minor change is made to the contact person. This standard remains recognized and identified under current item 74.

2. In the supplementary information sheet for ISO 7785–1:1997, part 1, identified under previous item 75, a minor change is made to the contact person. This standard remains recognized and identified under current item 75.

3. In the supplementary information sheet for ISO 7785–2:1995, part 2, identified under previous item 76, a minor change is made to the contact person. This standard remains recognized and identified under current item 76.

4. In the supplementary information sheet for ISO 9168:1991, identified under previous item 78, a minor change is made to the contact person. This standard remains recognized and identified under current item 78.

5. In the supplementary information sheet for ISO 13294:1997, identified under previous item 84, a minor change is made to the contact person. This standard remains recognized and identified under current item 84.

E. General

1. IEC 60601–1–1:1992–06 amendment 1, 1995–11 is withdrawn under previous item 5. IEC 60601–1–1:2000 is added under current item 27.

2. IEC 60601–1–2, First Edition 1993–04, is withdrawn under previous item 6. IEC 60601–1–2, Second Edition 2001, is added under current item 28.

3. ASTM D–4169/1993 is withdrawn under previous item 17. ASTM D–4169:1999 was recognized by ''Sterility'' in the November 15, 2001, recognition list 004.

F. General Hospital/General Plastic Surgery

1. In the supplementary information sheet for IEC 60601–2–21, identified under previous item 09, a minor change is made to the contact person. This standard remains recognized and identified under current item 09.

2. In the supplementary information sheet for IEC 60601–2–38, identified under previous item 10, a minor change is made to the contact person. This standard remains recognized and identified under current item 10.

3. In the supplementary information sheet for IEC 60601–2–19/1996–10, identified under previous item 29, the a minor change is made to contact person. This standard remains recognized and identified under current item 29.

4. In the supplementary information sheet for IEC 60601–2–20/1996–10, identified under previous item 32, the a minor change is made to contact person. This standard remains recognized and identified under current item 32.

5. ISO 8536–4, First Edition 1987–11–01, is withdrawn under previous item 17. ISO 8536–4, Second Edition 1998–02–15, is added under current item 75.

6. ISO 1135–4, First Edition 1987–12–01, is withdrawn under previous item 19. ISO 1135–4, Second Edition 1998–03–15, is added under current item 76.

7. ASTM F1862–98 is withdrawn under previous item 36. ASTM F1862–00a is added under current item 77.

8. ASTM F1670–97 is withdrawn under previous item 39. ASTM F1670–98 is added under current item 78.

9. ISO 594/2, First Edition 1991–05–01, is withdrawn under previous item 12. ISO 594–2:1998 is added under current item 79.

10. ASTM E1112–86 (reapproved 1991) is withdrawn under previous item 02. ASTM E1112–00 (reapproved 1991) is added under current item 80.

G. ObGyn/Gastroenterology

1. ASTM F1518–94 is withdrawn under previous item 22. ASTM F1518–00 is added under current item 23.

2. ASTM F623–89 is withdrawn under previous item 3. ASTM F623–99 is added under current item 24.

3. AAMI HF18–93 is withdrawn under previous item 18. ANSI/AAMI HF18–2001 is added under current item 25.

H. Orthopaedic

1. ASTM F67–95 is withdrawn under previous item 1. ASTM F67–00 is added under current item 123.

2. ASTM F86–91 is withdrawn under previous item 3. ASTM F86–01 is added under current item 124.

3. ASTM F139–96 is withdrawn under previous item 7. ASTM F139–00 is added under current item 125.

4. ASTM F366–82 (R1993) is withdrawn under previous item 8. ASTM F366–82 (2000) is added under current item 126.

5. ASTM F562–95 is withdrawn under previous item 11. ASTM F562–00 is added under current item 127.

6. ASTM F604–94 is withdrawn under previous item 15 with no replacement. ASTM discontinued it in 2001.

7. ASTM F688–95 is withdrawn under previous item 20. ASTM F688–00 is added under current item 128.

8. ASTM F745–95 is withdrawn under previous item 21. ASTM F745–00 is added under current item 129.

9. ASTM F799–96 is withdrawn under previous item 25. ASTM F799–99 is added under current item 130.

10. ASTM F1044–95 is withdrawn under previous item 30. ASTM F1044–99 is added under current item 131.

11. ASTM F1088–87 (1992) is withdrawn under previous item 31. ASTM F1088–87 (1992) e1 is added under current item 132.

12. ASTM F1108–97 is withdrawn under previous item 34. ASTM F1108–97a is added under current item 133.

13. ASTM F1295–97 is withdrawn under previous item 39. ASTM F1295–97a is added under current item 134.

14. ASTM F1341–92 is withdrawn under previous item 41. ASTM F1341–99 is added under current item 135.

15. ASTM F1472–93 is withdrawn under previous item 44. ASTM F1472–00 is added under current item 136.

16. ASTM F1501–95 is withdrawn under previous item 45. ASTM discontinued it in 2000. It was replaced with ASTM F1147–99 item 107.

17. ASTM F1537–94 is withdrawn under previous item 46. ASTM F1537–00 is added under current item 137.

18. ASTM F1541–94 is withdrawn under previous item 47. ASTM F1541–00 is added under current 138.

19. ASTM F1580–95 is withdrawn under previous item 48. ASTM F1580–95e1 is added under current item 139.

20. ASTM F1582–95 is withdrawn under previous item 49. ASTM F1582–98 is added under current item 140.

21. ASTM F1612–95 is withdrawn under previous item 52. ASTM F1612–95 (2000) is added under current item 141.

22. ASTM F1658–95 is withdrawn under previous item 53. ASTM discontinued it in 2000. It was replaced with ASTM F1044–99, item 131.

23. ASTM F1672–95e1 is withdrawn under previous item 55. ASTM F1672–95 (2000) is added under current item 142.

24. ISO 7153–1:1991 is withdrawn under previous item 77. ISO 7153–1:1991/amended 1:1999 is added under current item 143.

25. ASTM F138–97 is withdrawn under previous item 89. ASTM F138–00 is added under current item 144.

26. ASTM F565–85 (1996) e1 is withdrawn under previous item 92. ASTM F565–00 is added under current item 145.

27. ASTM F603–83 (1995) is withdrawn under previous item 94. ASTM F603–00 is added under current item 146.

28. ASTM F1539–95 is withdrawn under previous item 95. ASTM discontinued it in 2000. It was replaced with ASTM F564–00, item 156.

29. ASTM F620–97 is withdrawn under previous item 96. ASTM F620–00 is added under current item 147.

30. ASTM F648–98 is withdrawn under previous item 99. ASTM F648–00 is added under current item 148.

31. ASTM F746–87 (1994) is withdrawn under previous item 100. ASTM F746–87 (1999) is added under current item 149.

32. ASTM F983–86 (1996) is withdrawn under previous item 102. ASTM F983–86 (2000) is added under current item 150.

33. ASTM F1540–95 is withdrawn under previous item 103. ASTM discontinued it in 2000. It was replaced with ASTM F564–00, item 156.

34. ASTM F1091–91 (1996) is withdrawn under previous item 105. ASTM F1091–91 (2000) is added under current item 151.

35. ASTM F1691–96 is withdrawn under previous item 106. ASTM discontinued it in 2001. It was replaced with ASTM F543–01, item 157.

36. ASTM F1160–98 is withdrawn under previous item 108. ASTM F1160–00 is added under current item 152.

37. ASTM F1264–99 is withdrawn under previous item 110. ASTM F1264–00 is added under current item 153.

38. ASTM F1350–91 (1996) is withdrawn previous item 112. ASTM F1350–91 (2001) is added under current item 154.

39. ISO 7207–2:1994 is withdrawn under previous item 122. ISO 7207–2:1998 is added under current item 155.

I. Physical Medicine

1. ISO 7176–1:1986 is withdrawn under previous item 16. ISO 7176–1:1999 is added under current item 158.

2. ISO 7176–2:1990 is withdrawn under previous item 17. ISO 7176–2:2001 is added under current item 159.

3. ANSI/RESNA WC/Vol. 2–1998, section 21: Requirements and Test Methods for Electromagnetic Compatibility—new item #160.

J. Radiology

1. AIUM—1994 is withdrawn under previous item 4. AIUM—Medical Ultrasound Safety (R1999) is added under current item 66.

2. In the supplementary information sheet for IEC 60806, identified under previous item 6, the title has been changed. This standard remains recognized and identified under current item 6.

3. NEMA MS–1–1988 is withdrawn under previous item 10. NEMA MS–1–1998 (R2000) is added under current item 67.

4. NEMA MS–4–1989 is withdrawn under previous item 13. NEMA MS–4 (R1998) is added under current item 68.

5. NEMA MS6–2000 is withdrawn under previous item 15. NEMA MS6–2000 is added under current item 69.

6. NEMA PS3 (set), DICOM Set is withdrawn under previous item 19. NEMA PS3 (set), DICOM Set is added under current item 70.

7. NEMA UD 2–2998, revision 2 is withdrawn under previous item 20. NEMA UD 2–1998 revision 2 is added under current item 71.

8. NEMA UD 3–1998, revision 1 is withdrawn under previous item 21. NEMA UD 3–1998 revision 1 is added under current item 72.

9. In the supplementary information sheet(s) for IEC 60601–2–19, identified under previous item 36, the date has been changed. This standard remains recognized and identified under current item 36.

10. In the supplementary information sheet(s) for AIUM–AOMS, identified under previous item 44, the title has been changed. This standard remains recognized and identified under current item 44.

11. In the supplementary information sheet(s) for IEC 61303, identified under previous item 49, a minor change is made to the Standard Development Organization. This standard remains recognized and identified under current item 49.

12. In the supplementary information sheet(s) for IEC 61145, identified under previous item 51, the name of the Standards Development Organization has been changed. This standard remains recognized and identified under current item 51.

13. In the supplementary information sheet(s) for UL–544, identified under previous item 52, the date has been changed. This standard remains recognized and identified under current item 52.

14. UL–122 is withdrawn under previous item 61. UL–122 (2001) is added under current item 73.

15. NEMA MS–7–1998 is withdrawn under previous item 16. NEMA MS–7–1998 is added under current item 74.

K. Sterility

1. AAMI/ANSI ST34:1991 is withdrawn under previous item 15. ANSI/AAMI/ISO 14161:2000 is added under current item 70.

2. In the supplementary information sheet for ANSI/AAMI ST24:1999, identified under previous item 38, the title and the contact person have been changed. This standard remains recognized and identified under current item 38.

3. In the supplementary information sheet for ANSI/AAMI ST37:1996, identified under previous item 47, the title and the contact person have been changed. This standard remains recognized and identified under current item 47.

4. In the supplementary information sheet for ANSI/AAMI ST41:1999, identified under previous item 49, the title and the contact person have been changed. This standard remains recognized and identified under current item 49.

III. List of Recognized Standards

FDA maintains the agency's current list of ''FDA Recognized Consensus Standards'' in a searchable data base that may be accessed directly at FDA's Internet site at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm. FDA will incorporate the modifications and minor revisions described in this notice into the data base and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective.

FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive ''Guidance on the Recognition and Use of Consensus Standards'' via your fax machine, call the CDRH Facts-On-Demand system at

800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of ''Guidance onthe Recognition and Use of Consensus Standards'' may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing ''Modifications to the List of Recognized Standards, Recognition List Number: 006'' will be available on the CDRH home page. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable data base for ''FDA Recognized Consensus Standards,'' may be accessed through hyper links at http://www.fda.gov/cdrh/stdsprog.html. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at http://www.fda.gov/cdrh/fedregin.html.

VI. Submission of Comments and Effective Date

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current listing of ''Modifications to the List of Recognized Standards, Recognition list: 006.''

The recognition of standards announced in this notice of modifications will become effective on January 14, 2002.

VII. Listing of New Entries

The listing of new entries and consensus standards added as ''Modifications to the List of Recognized Standards,'' under Recognition List Number: 006, is as follows:

Item Number	Title of Standards	Reference Number and Date
	Biocompatibility	
52	Standard Practice for Testing for Biological Responses to Particles In Vivo	ASTM F1904–98e1
53	Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	ASTM E1372–95 (1999)
54	Biological Evaluation of Medical Devices—Part 5: Tests for Cytotoxicity: In Vitro Methods	ANSI/AAMI/ISO 10993–5:1999
55	Biological Evaluation of Medical Device—Part 6: Test for Local Effects After Implantation	ANSI/AAMI/ISO 10993–6:1994
	Cardiovascular/Neurology	
34	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants	ASTM F138–00
35	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications	ASTM F562–00
36	Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstital) Alloy (UNS R56401) for Surgical Implant Applications	ASTM F136–98e1
37	Medical Electrical Equipment, Part 2: Particular Requirements for the Safety of Transcutaneous Partial Pressure Monitoring Equipment	IEC 60601–2–23 (1999–12)
38	Medical Electrical Equipment-Part 2: Partial Requirements for the Safety of Direct Blood Pressure Monitoring Equipment	IEC 60601–2–34 (2000–10)
39	Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Application	ASTM F647–94 (2000)
40	Nonautomated Sphygmomanometers	ANSI/AAMI SP9:1994
41	Diagnostic Electrocardiographic Devices	ANSI/AAMI EC11:1991
42	Cardiac Monitors, Heart Rate Meters, and Alarms	ANSI/AAMI EC13:1992
43	Ambulatory Electrocardiographs	ANSI/AAMI EC38:1998
44	Blood Pressure Transducers	ANSI/AAMI BP22:1994
	General	
27	Medical Electrical Equipment—Part 1: General Requirements for Safety; Safety Requirements for Medical Electrical Systems	IEC 60601–1–1:2000
28	Medical Electrical Equipment—Part 1: General Requirements for Safety; Electromagnetic Compatibility—Requirements and Tests	IEC 60601–1–2, Second Edition, 2001
29	Human Factors Design Process for Medical Devices	ANSI/AAMI HE74–2001
	General Hospital/ General Plastic Surgery	
62	Infusion Equipment for Medical Use—Part 6: Freeze Drying Closures for Infusion Bottles	ISO 8536–6, First Edition, 1996–04–01
63	Infusion Equipment, Caps Made of Aluminum-Plastic Combinations for Infusion Bottles	ISO 8536-7, Second Edition, 1999-09-01
64	Infusion Equipment for Medical Use—Part 3: Aluminum Caps for Infusion Bottles	ISO 8536–3, Second Edition, 1999–09–01
65	Infusion Equipment for Medical Use—Part 2: Closures for Infusion Bottles	ISO 8536–2, First Edition, 1992–09–15
66	Infusion Equipment for Medical Use—Part 1: Infusion Glass Bottles	ISO 8536–1, Second Edition, 2000–06–01
67	Infusion Equipment for Medical Use—Part 5: Burette Type Infusion Sets	ISO 8536–5, First Edition, 1992–01–15

Item Number	Title of Standards	Reference Number and Date
68	Sterile Hypodermic Syringes for Single Use—Part 2: Syringes for Use With Powder-Driven Syringes Pumps	ISO 7886–2, First Edition, 1996–05–15
69	Stainless Steel Needle Tubing for Manufacture of Medical Devices	ISO 9626, First Edition, 1991–09–11
70	Standard Specification of Phase Change—Type Disposable Thermometer for Intermittent Determination of Human Temperature	ASTM E825–87
71	Standard Specification of Clinical Thermometers (Maximum Self-Registering, Mercury-In-Glass)	ASTM E667–86
72	Sterile, Single-Use Intravascular Catheters—Part 5: Over-Needle Peripheral Catheters, Amendment 1	ISO 10555–5, First Edition, 1996–06–15
73	Standard Specification for Clinical Thermometers Probe Covers and Sheaths	ASTM E1104–86
74	Standard Specification for Clinical Thermometers for Intermittent Determination of Patient Temperature	ASTM E1965–98
75	Infusion Equipment for Medical Use—Part 4: Infusion Sets for Single Use, Gravity Feed	ISO 8536–4, Second Edition, 1998–02–15
76	Transfusion Equipment for Medical Use—Part 4: Transfusion Sets for Single Use	ISO 1135–4, Second Edition, 1998–03–15
77	Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	ASTM F1862–00a
78	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	ASTM F1670–98
79	Conical Fittings With a 6 Percent (Luer) Taper for Syringes, Needles and Certain Other Medical Equipment—Part 2: Lock Fittings	ISO 594–2:1998
80	Standards Specification for Electronic Thermometers for Intermittent Determination of Patient Temperature	ASTM E1112–00 (reapproved 1991)
81	Standard Specification for Direct-Reading Liquid Crystal Forehead Thermometers	ASTM E1601–85
	In Vitro Devices	
54	Immunoprecipitin Analyses: Procedures for Evaluating the Performance of Materials Second Edition; Approved Guideline	NCCLS: D12–A2
55	Procedures for the Handling and Processing of Blood Specimens; Approved Guideline; Second Edition	NCCLS: H18–A2
56	Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobiacally; Approved Standard; Fifth Edition	NCCLS: M7–A5
57	Performance Standards for Antimicrobial Disk Susceptibility Tests; Approved Standard; Seventh Edition	NCCLS: M2–A7
58	Procedures for the Collection of Arterial Blood Specimens; Approved Standard	NCCLS: H1–A3
59	Laboratory Automation: Bar Codes for Specimen Container Identification; Approved Standard	NCCLS: AUTO2–A
60	Laboratory Automation: Specimen Container/Specimen Carrier; Approved Standard	NCCLS: AUTO1–A
61	Laboratory Automation: Communications With Automated Clinical Laboratory Systems, Instruments, Devices, and Information Systems; Approved Standard	NCCLS: AUTO3–A
	Obstetrics–Gynecology/Gastroenterology	
23	Standard Practice For Cleaning and Disinfection of Flexible Fiberoptic and Video Endoscopes Used in the Examination of Hollow Viscera	ASTM F1518–00
24	Standard Performance Specifications for Foley Catheters	ASTM F623–99
25	Electrosurgical Devices	ANSI/AAMI HF18–2001
	Ophthalmic	
27	Ophthalmic Implants—Intraocular Lenses—Part 7: Clinical Investigations	ISO 11979–7:2001
28	Ophthalmic Optics—Contact Lens Care Products—Microbiological Requirements and Test Methods for Products and Regimens for Hygienic Management of Contact Lenses	ISO 14729:2001
29	Ophthalmic Optics—Contact Lens Care Products—Antimicrobial Preservative Efficacy Testing and Guidance on Determining Discard Date	ISO 14730:2000
	Orthopaedic	
123	Standard Specification for Unalloyed Titanium for Surgical Implant Applications (UNS R50250, UNS R50400, UNS R50550, UNS R50700)	ASTM F67–00
124	Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants	ASTM F86–01
125	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants	ASTM F139–00
125	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants	ASTM F139–00
126	Standard Specification for Fixation Pins and Wires	ASTM F366–82 (2000)
127	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications	ASTM F562–00
128	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035)	ASTM F688–00
129	Standard Specification for 18 Chromium-12.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications	ASTM F745–00
130	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539)	ASTM F799–99
131	Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings	ASTM F1044-99
132	Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation	ASTM F1088–87 (1992) e1
133	Standard Specification for Ti6A14V Alloy Castings for Surgical Implants (UNS R56406)	ASTM F1108–97a
134	Standard Specification for Wrought Titanium-6 Aluminum-7 Niobium Alloy for Surgical Implant Applications (UNS R56700)	ASTM F1295–97a
135	Standard Specification for Unalloyed Titanium Wire UNS R50250, UNS R50400, UNS R50550, UNS R50700 for Surgical Implant Applications	ASTM F1341–99
136	Standard Specification for Wrought Titanium-6Aluminum-4Vanadium Alloy for Surgical Implant Applications	ASTM F1472–00

Item Number	Title of Standards	Reference Number and Date
137	Standard Specification for Wrought Cobalt-28-Chromium-6-Molybdenum Alloy for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539)	ASTM F1537–000
138	Standard Specification and Test Methods for External Skeletal Fixation Devices	ASTM F1541–00
139	Standard Specification for Titanium and Titanium-6 Percent Aluminum-4 Percent Vanadium Alloy Powders for Coatings of Surgical Implants	ASTM F1580–95e1
140	Standard Terminology Relating to Spinal Implants	ASTM F1582–98
141	Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components with Torsion	ASTM F1612–95 (2000)
142	Standard Specification for Resurfacing Patellar Prosthesis	ASTM F1672–95 (2000)
143	Surgical Instruments—Metallic Materials—Part 1: Stainless Steel	ISO 7153–1:1991/ Amd.1:1999
144	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673)	ASTM F138–00
145	Standard Practice for Care and Handling of Orthopedic Implants and Instruments	ASTM F565–00
146	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application	ASTM F603–00
147	Standard Specification for Alpha Plus Beta Titanium Alloy Forgings for Surgical Implants	ASTM F620–00
148	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	ASTM F648–00
149	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	ASTM F746–87 (1999)
150	Standard Practice for Permanent Marking of Orthopaedic Implant Components	ASTM F983–86 (2000)
151	Standard Specification for Wrought Cobalt-Chromium Alloy Surgical Fixation Wire	ASTM F1091–91 (2000)
152	Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings	ASTM F1160–00
153	Standard Specification and Test Methods for Intramedullary Fixation Devices	ASTM F1264–00
154	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673)	ASTM F1350–91 (2000)
155	Implants for Surgery—Components for Partial and Total Knee Joint Prostheses—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastics	ISO 7207–2:1998
156	Standard Specification and Test Methods for Metallic Bone Staples	ASTM F564–00
157	Standard Specification and Test Methods for Metallic Medical Bone Screws	ASTM F543–01
	Physical Medicine	
158	Wheelchairs—Part 1: Determination of Static Stability	ISO 7176–1:1999
159	Wheelchairs—Part 2: Determination of Dynamic Stability of Electric Wheelchairs	ISO 7176–2:2001
160	Requirements and Test Methods for Electromagnetic Compatibility	ANSI/RESNA WC/Vol.2–1998, Section 21
	Radiology	
63	Medical Electrical Equipment—Part 2–43: Particular Requirements for the Safety of X-ray Equipment for Interventional Procedures	IEC 60601–2–43–Ed. 1.0
64	Medical Electrical Equipment—Part 2–45: Particular Requirements for the Safety of Mammographic X-ray Equipment and Mammographic Stereotatic Devices	IEC 60601–2–45–Ed. 20
65	Standard Test Method for Measurement of Magnetically Induced Displacment Force on Passive Implants in the Magnetic Resonance Environment	ASTM F2052–00
66	Medical Ultrasound Safety (R1999)	AIUM
67	Determination of Signal to Noise Ratio (SNR) in Diagnostic Magnetic Resonance Images	NEMA MS–1 (R–2000)
68	Acoustic Noise Measurement Procedure for Diagnostic Magnetic Resonance Imaging Device	NEMA MS–4 (R1998)
69	Characterization of Special Purpose Coils for Diagnostic Magnetic Resonance Images	NEMA MS6–2000
70	Digital Imaging and Communications in Medicine-Set Includes PS3.1 Through PS3.14	NEMA PS3 (Set), DICOM Set
71	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	NEMA UD 2–1998 (revision 2)
72	Standard for Real Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment	NEMA UD 3–1998 (revision 1)
73	Medical Electrical Equipment: Radionuclide Calibrators—Particular Methods for Describing Performance Calibration and Usage of Ionization	IEC 61303 (1994–10)
74	Calibration and Usage of Ionization Chamber Systems for Assay of Radionuclides	IEC 61145 (1992-05)
75	Standard for Safety of Photographic Equipment—Fourth Edition	UL–122 (2001)
76	Measurement Procedure for Time-Varying Gradient Fields (dB/dt) for Magnetic Resonance Imaging Systems	NEMA MS7–1998
	Software	
7	Medical Device Software—Software Life Cycle Processes	ANSI/AAMI SW68:2001
	Sterility	
70	Sterilization of Health Care Products—Biological Indicators—Guidance for the Selection, Use and Interpretation of Results, Second Edition	ANSI/AAMI/ISO 14161–2000

Dated: December 18, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–852 Filed 1–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public that the U.S. Fish and Wildlife Service (Service), in cooperation with the Oregon Department of Fish and Wildlife (ODFW), The Nature Conservancy (TNC), and Portland General Electric (PGE), intends to gather information necessary to prepare an environmental document (environmental assessment or environmental impact statement) regarding the proposed Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (MSCCAA) and issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). Threemile Canyon Farms is the potential permit applicant.

The Service is furnishing this notice in order to: (1) Advise other Federal and State agencies, affected tribes, and the public of our intentions; (2) announce the initiation of a 30-day public scoping period; and (3) to obtain suggestions and information on the scope of issues to be included in the environmental document.

DATES: Written comments from all interested parties must be received on or before February 13, 2002.

ADDRESSES: Comments should be addressed to Kemper McMaster, State Supervisor, USFWS, 2600 SE 98th Ave., Suite 100, Portland, OR 97266, telephone (503) 231–6179, facsimile (503) 231–6195.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, (503) 231–6179.

SUPPLEMENTARY INFORMATION: Candidate Conservation Agreements with Assurances contain a strategy for covered lands and activities that demonstrate an applicant's contribution to preclude or remove the need to list a covered species as threatened or endangered under the Act. In return, the applicant is provided with regulatory certainty that they will not be required to provide additional conservation measures should any of the covered species become listed under the ESA in the future. The MSCCAA will cover approximately 93,000 acres near Boardman, Oregon, including a 23,000-acre wildlife conservation area managed by TNC and property owned by PGE located within the plan boundaries. The primary goal of the MSCCAA is to implement a variety of habitat conservation measures for the following covered species: the Washington ground squirrel (*Spermophilus washington*), ferruginous hawk (*Buteo regalis*), loggerhead shrike (*Lanius ludovicianus*), grasshopper sparrow (*Ammodramus savannarum*), and the sage sparrow (*Amphispiza belli*). Conservation measures will focus on restoration and re-establishment of native plant communities including sagebrush and bitterbrush steppe along with grassland species such as needle and thread (*Stipa spp.*). Other measures include control of exotic species and implementation monitoring. Potential covered activities include: mechanized farming and dairy operations; product transportation; road construction, use and maintenance; site preparation; fertilizer application; fire suppression; prescribed burning and other agricultural or habitat restoration activities.

The Service will conduct an environmental review of the Plan and prepare an environmental document. The review will analyze the proposal, as well as a full range of reasonable alternatives, and the associated impacts of each. Should information become available during the scoping process that indicates the likelihood of significant impacts from the proposed project, an Environmental Impact Statement will be prepared. Otherwise, an Environmental Assessment will be prepared. Comments and suggestions are invited from all interested parties to ensure the full range of issues related to this proposed action are identified. Comments, or questions should be addressed to the Service at the address or telephone number provided above.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations 40 CFR (1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Service for compliance with those regulations.

Dated: January 8, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–849 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0122).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Filing Sureties.''

DATES: Submit written comments on or before March 15, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION:

Title: Filing Sureties.

OMB Control Number: 1010–0122.

Bureau Form Number: Forms MMS–4435 and 4436.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in

carrying out DOI's Indian trust responsibility.

Regulations in 30 CFR part 243 allow lessees, designees, or payors who can demonstrate that they are financially solvent to stay the effectiveness of an MMS order or decision without posting a surety instrument (Federal leases only). For those who are not financially solvent or for appeals involving Indian leases, MMS requires that a surety instrument be posted to secure the financial interests of the public and Indian lessors during the entire administrative or judicial appeal process. MMS accepts the following types of surety instruments:

- Form MMS–4435, Administrative Appeal Bond;
- Form MMS–4436, Letter of Credit;
- Certificates of Deposit; and
- U.S. Treasury Securities.

This information collection covers the hour burden associated with submitting annual audited financial statements or the surety instruments listed above. Submission of the information in this collection is necessary to stay the effectiveness of an MMS order or decision issued for a Federal and Indian property. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 300 Federal or Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 300 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon.

Public Comment Policy. We will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 16, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–881 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings for Calendar Year 2002

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for calendar year 2002 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco and at Point Reyes Station, California:

Tuesday, January 22—San Francisco, CA
Saturday, February 2—Point Reyes, CA
Tuesday, February 26—San Francisco, CA
Tuesday, March 26—San Francisco, CA
Tuesday, April 23—San Francisco, CA
Saturday, May 4—Point Reyes, CA
Tuesday, May 28—San Francisco, CA
Tuesday, June 25—San Francisco, CA
Tuesday, July 23—San Francisco, CA
Tuesday, August 27—San Francisco, CA
Tuesday, September 24—San Francisco, CA
Saturday, October 19—Point Reyes, CA
Tuesday, October 22—San Francisco, CA
Tuesday, November 26—San Francisco, CA

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service areas in Marin, San Francisco and San Mateo Counties. Current members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Lennie Roberts
Dr. Edgar Wayburn
Mr. Michael Alexander
Mr. Gordon Bennett
Ms. Anna-Marie Booth
Ms. Yvonne Lee
Ms. Susan Giacomini Allan
Mr. Trent Orr
Mr. Redmond Kernan
Mr. Doug Nadeau
Ms. Betsey Cutler
Mr. Trent Orr
Mr. Dennis Rodoni
Mr. John J. Spring
Mr. Fred Rodriguez
Mr. Paul Jones

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, except the Saturday, February 2, Saturday, May 4 and Saturday, October 19 meetings, which will be held at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California. However, some meetings may be held at other locations in Marin County or at locations in San Mateo County. Information confirming the time and location of all Advisory Commission meetings or cancellations of any meetings can be received by calling the Office of the Staff Assistant at (415) 561–4733.

Anticipated possible agenda items at meetings during calendar year 2002 may include:

- Updates on Advanced Notice of Proposed Rulemaking (ANPR)
- Updates on Planning Issues for Fort Baker
- Doyle Drive Scoping Overview and Public Comment
- Updates on Presidio Vegetation Management Plan
- Updates on Marin Comprehensive Transportation Planning
- Reports on Park Site Ferry Planning
- Updates on Park 5-Year Strategic Plan
- Update reports on Golden Gate Bridge Seismic Upgrade Project and Park Impacts
- Update reports on Crissy Field Education Center
- Reports on GGNRA education programs
- Update on Plans for Crissy Field projects
- Reports and updates on the Cliff House Restoration Plan and other elements of the Sutro Design Plan, including the Merrie Way Visitor Center
- Update Reports on Fort Mason Center Pier One and Pier 2 Seismic Work
- Reports on park equestrian permits
- GGNPA annual briefing
- Redwood Creek Watershed Planning
- Reports on Alcatraz Historic Preservation and Safety Construction
- Update on park expansion legislation
- Update on transfer of properties in GGNRA boundary to NPS
- Issues affecting San Mateo County national park lands
- Update on Caltrans Highway 92 and Devils Slide tunnel projects
- Update reports on ''Park Partner'' programs, including Bay Area Discovery Museum plans, Marine Mammal Center planning, and Slide Ranch site improvements
- Updates on Fort Mason Reuse projects and Upper Fort Mason planning
- Updates on Presidio Trails Master Plan and Presidio Mountain Lake projects
- Updates on issues concerning areas managed by the Presidio Trust, and
- Updates on issues concerning management and planning at Point Reyes NS, including Point Reyes NS General Management Plan updates.

These meetings will also contain Superintendent's Report and a Presidio Trust Director's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site nps.gov/goga under the section ''Advisory Commission''.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556–2766. A verbatim transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 13. 2001.

Mary Gibson Scott,

Acting General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 02–865 Filed 1–11–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–929–931 (Final)]

Silicomanganese From India, Kazakhstan, and Venezuela

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: On November 9, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigations (66 FR 59596, November 29, 2001). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from January 22, 2002, to March 25, 2002 (66 FR 63522, December 7, 2001, and 66 FR 67185, December 28, 2001). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 21, 2002; the prehearing conference, if needed, will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 25, 2002; the prehearing staff report will be placed in the nonpublic record on March 15, 2002; the deadline for filing prehearing briefs is March 22, 2002; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 2, 2002; the deadline for filing posthearing briefs is April 8, 2002; the Commission will make its final release of information on

April 22, 2002; and final party comments are due on April 24, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–891 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: Notice of second annual report, scheduling of public hearing, and request for public comments.

EFFECTIVE DATE: January 7, 2002.

SUMMARY: The Commission has announced the schedule for its second annual report in investigation No. 332–427, U.S. Market Conditions for Certain Wool Articles, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on February 12, 2001, at the request of the United States Trade Representative (USTR).

FOR FURTHER INFORMATION CONTACT: For general information, contact Lisa Ferens (202–205–3486; *lferens@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091; *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background:

As requested by the USTR, the Commission will provide information for 2001 and year-to-date 2001–02 on U.S. market conditions, including domestic demand, domestic supply, and domestic production for men's and boys' worsted wool suits, suit-type jackets, and trousers; worsted wool fabrics and yarn used in the manufacture of such clothing; and wool fibers used in the manufacture of such fabrics and yarn. Also, as requested by the USTR, the Commission will provide, to the extent possible, data on:

(1) Increases or decreases in sales and production of the subject domestically-produced worsted wool fabrics;

(2) Increases or decreases in domestic production and consumption of the subject apparel items;

(3) The ability of domestic producers of the subject worsted wool fabrics to meet the needs of domestic manufacturers of the subject apparel items in terms of quantity and ability to meet market demands for the apparel items;

(4) Sales of the subject worsted wool fabrics lost by domestic manufacturers to imports benefiting from the temporary duty reductions on certain worsted wool fabrics under the tariff-rate quotas (TRQs) provided for in headings 9902.51.11 and 9902.51.12 of the Harmonized Tariff Schedule of the United States (HTS);

(5) Loss of sales by domestic manufacturers of the subject apparel items related to the inability to purchase adequate supplies of the subject worsted wool fabrics on a cost competitive basis; and

(6) The price per square meter of imports and domestic sales of the subject worsted wool fabrics. The USTR requested that the Commission submit its second (and final) annual report under this investigation by September 16, 2002. The USTR has stated that it will provide copies of the Commission's confidential reports to the U.S. Department of Commerce. The USTR requested that the Commission issue a public version of the annual report, as soon as possible thereafter, with any business confidential information deleted. The Commission submitted its first annual report to the USTR on September 17, 2001.

Public Hearing:

A public hearing in connection with preparation of the second annual report will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 18, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 2, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 4, 2002. The deadline for filing post-hearing briefs or statements is 5:15 p.m., April 29, 2002. In the event that, as of the close of business on April 2, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 2, 2002, to determine whether the hearing will be held.

Written Submissions:

In connection with preparation of the second annual report for the USTR, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission. In lieu of or in addition to participating in the above-referenced hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission by no later than the close of business on April 29, 2002. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in its reports to the USTR. In the public version of these reports, however, the Commission will not publish confidential business information in a manner that would reveal the individual operations of the firm supplying the information. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

List of Subjects:

Tariffs, Imports, Wool, Fabric, and Suits.

Issued: January 8, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–889 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–427]

U.S. Market Conditions for Certain Wool Articles

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by COB March 11, 2002.

EFFECTIVE DATE: January 7, 2002.

Purpose of Information Collection

The forms are for use by the Commission in connection with its second, and final, annual report for investigation No. 332–427, U.S. Market Conditions for Certain Wool Articles, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR), which asked that the Commission submit its second annual report by September 16, 2002.

Summary of Proposal

(1) *Number of forms submitted:* 3.

(2) *Title of forms:* Questionnaire for U.S. Producers of Worsted Wool Fabrics; Questionnaire for U.S. Purchasers of Worsted Wool Fabrics; Questionnaire for U.S. Importers of Worsted Wool Fabrics.

(3) *Type of request:* reinstatement with change.

(4) *Frequency of use:* one-time use.

(5) *Description of respondents:* U.S. producers, purchasers, and importers of worsted wool fabrics.

(6) *Estimated number of respondents:* 56 (producers, purchasers, and importers).

(7) *Estimated total number of hours to complete the forms:* 1,245 hours.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the forms and supporting documents may be obtained from Lisa Ferens (202–205–3486; *lferens@usitc.gov*) of the Office of Industries, U.S. International Trade Commission. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals may obtain information on this matter by contacting the Commission's TTD terminal (telephone No. 202–205–1810). General information about the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: January 8, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–890 Filed 1–11–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ) Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until March 15, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact George Schneider, Special Counsel in the Voting Section of the Civil Rights Division, 1800 G Street, NW., Washington, DC 20008.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. *Applicable Component:* Civil Rights Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, local or tribal governments. *Other:* None. Jurisdictions specifically covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that proposed voting changes are not racially discriminatory.

The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 10,103 respondents with the average response at 10.021 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 47,365 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: January 8, 2002

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–867 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Medical Certification for Disability Exception.

The Department of Justice (DOJ), Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 66, Number 176, page 47240) on September 11, 2001, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 13, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N–648, Immigration and Naturalization Service, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Affected Public:* Individuals or households. The Immigration and Naturalization Service uses the Form N–648 medical certification issued by the licensed medical professional to substantiate a claim for an exception to the requirements of section 312(a) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 20,000 respondents. The amount of estimated time required for the average respondent to respond is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Robert Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 8, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–892 Filed 1–11–02; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: National Survey of Public Participation in the Arts. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before

March 20, 2002. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Tom Bradshaw, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 617, Washington, DC 20506–0001, telephone (202) 682–5432 (this is not a toll-free number), fax (202) 682–5677.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 02–879 Filed 1–11–02; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility ad clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form.

OMB Approval Number: 3145–0001.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

Abstract: The North Atlantic Treaty Organization (NATO) initiated its Advanced Study Institutes Program in 1958 modeled after a small number of very successful summer science ''courses'' that were held in Europe and that sought to rebuild Europe's science strength following World War II. The goal was to bring together both students and researchers from the leading centers of research in highly targeted fields of science and engineering to promote the ''American'' approach to advanced learning, spirited give-and-take between students and teachers, that was clearly driving the rapid growth of U.S. research strength. Today the goal remains the same; but due to the expansion of NATO, each year an increasing number of ASIs are held in NATO Partner Countries along with those held in the original NATO Member countries. In the spirit of cooperation with this important activity, the Foundation inaugurated in 1959 a small program of travel grants for advanced graduate students and young postdoctorals to assist with the major cost of such participation, that of transatlantic travel. It remains today a significant means for young scientists and engineers to develop contact with their peers throughout the world in their respective fields of specialization.

The Advanced Study Institutes (ASI) travel awards are offered primarily to advanced graduate students, but include recent postdoctoral students and new science faculty members, to attend one of the NATO's ASIs held in the NATO-member and partner countries of Europe. The NATO ASI program is targeted to those individuals nearing the completion of their doctoral studies in science, mathematics, and engineering who can take advantage of opportunities to become familiar with progress in their respective fields of specialization in other countries.

The following describes the procedures for the administration of the Foundation's NATO Advanced Study Institute (ASI) Travel Awards, which provide travel support for a number of U.S. graduate students and postdoctoral participants to attend the ASIs scheduled for Europe.

- Advanced Study Institute Determination

Once NATO has notified us that the schedule of institutes is final, and we have received the descriptions of each institute, we determine which institutes NSF will support. The ASI travel award program supports those institutes that offer instruction in the fields of science traditionally supported by NSF as published in *Guide to Programs.*

The program will not support institutes that deal with clinical topics, biomedical topics, or topics that have disease-related goals. Examples of areas of research that will not be considered are epidemiology; toxicology; the development or testing of drugs or procedures for their use; diagnosis or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals; and animal models of such conditions. However, the program does support institutes that involve research in bioengineering, with diagnosis or treatment-related goals that apply engineering principles to problems in biology and medicine while advancing engineering knowledge. The program also supports bioengineering topics that aid persons with disabilities. Program officers from other Divisions in NSF will be contacted should scientific expertise beyond our own be required in the determination process.

- Solicitation for Nominations

Following the final determination as to which Advanced Study Institutes

NSF will support, we contact each institute director to ask for a list of up to 5 nominations to be considered for NSF travel support.

• EHR Contact with the Individuals Nominated

Each individual who is nominated by a director will be sent the rules of eligibility, information about the amount of funding available, and the forms (NSF Form 1379, giving our Finance Office electronic banking information; NSF Form 1310 (already cleared), and NSF Form 192 (Application for International Travel Grant)) necessary for our application process.

• The Funding Process

Once an applicant has been selected to receive NSF travel award support, his or her application is sent to our Finance office for funding. They electronically transfer the amount of $1000 into the bank or other financial institution account identified by the awardee.

Our plan is to have the $1000 directly deposited into the awardee's account prior to the purchase of their airline ticket. An electronic message to the awardee states the NSF is providing support in the amount of $1000 for transportation and miscellaneous expenses. The letter also states that the award is subject to the condition in F.L. 27, *Attachment to International Travel Grant*, which states the U.S. flag-carrier policy.

As a follow-up, each ASI director may be asked to verify whether all NSF awardees attended the institute. If an awardee is identified as not utilizing the funds as prescribed, we contact the awardee to retrieve the funds. However, if our efforts are not successful, we will forward the awardee's name to DGA, which has procedures to deal with that situation.

We also ask the awardee to submit a final report on an NSF Form 250, which we provide as an attachment to the electronic award message.

• Selection of Awardees

The criteria used to select NSF Advanced Study Institute travel awardees are as follows:

1. The priority of selection is by the status level of the applicant:

(a) Advanced graduate student, or

(b) Recent post-doc (Ph.D. received no earlier than three years before the ASI).

(c) New faculty with Ph.D.'s received no earlier than three years before the ASI).

2. We shall generally follow the order of the nominations, listed by the director of the institute, within priority level.

3. Those who have not attended an ASI in the past will have a higher priority than those who have.

4. Nominees from different institutions and research groups have higher priority than those from the same institution or research group. (Typically, no more than one person is invited from a school or from a research group.)

Use of the Information: For NSF Form 192, information will be used in order to verify eligibility and qualifications for the award.

For NSF Form 250, information will be used to verify attendance at Advanced Study Institute and will be included in Division annual report.

Estimate of Burden: Form 192—1.5 hours; Form 250—2 hours.

Respondents: Individuals.

Estimated Number of Responses per Award: 150 responses, broken down as follows: For NSF Form 250, 75 respondents; for NSF Form 192, 75 respondents.

Estimated Total Annual Burden on Respondents: 262.5 hours, broken down by 150 hours for NSF Form 250 (2 hours per 75 respondents) and 112.5 hours for NSF Form 192 (1.5 hours per 75 respondents).

Dated: January 8, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 02–790 Filed 1–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its February 14, 2001, application for proposed amendment to Facility Operating License No. DPR–64 for the Indian Point Nuclear Generating Unit No. 3 (IP3), located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications to extend the allowed outage time for the emergency diesel generators and the associated fuel oil storage tanks from 72 hours to 14 days on a one-time basis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 21, 2001 (66 FR 15922). However, by letter dated December 5, 2001, the licensee withdrew the proposed change.

Further details with respect to this action, see the application for amendment dated February 14, 2001, as supplemented on July 25, 2001, and the licensee's letter dated December 5, 2001, which withdrew the application for license amendment. 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 Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm./adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Sr. Project Manager, Section 1, Project Directorate, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–847 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Amergen Energy Company, LLC; Three Mile Island Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR), section 50.44; 10 CFR part 50, appendix A, General Design Criterion 41; and 10 CFR part 50, appendix E, section VI, for Facility Operating License No. DPR–50 issued to AmerGen Energy Company, LLC, (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt TMI–1 from certain requirements of 10 CFR 50.44; 10 CFR part 50, appendix A, General Design Criterion 41; and part 10 CFR 50, appendix E, section VI, pertaining to the hydrogen control system requirements (i.e., containment post-accident hydrogen monitors, recombiners, and hydrogen purge system); and remove these requirements from the TMI–1 design basis. The licensee's request for an exemption from the functional requirement for hydrogen monitoring is not being approved. The NRC staff's position, with respect to each of the licensee's specific exemption requests, will be documented in the exemption. Consequently, this environmental assessment addresses only the exemption from the requirements related to the recombiners and the hydrogen purge system and the removal of these requirements from the TMI–1 design basis.

The proposed action is in accordance with the licensee's letter dated September 20, 2000, as supplemented by letters dated August 2 and September 28, 2001.

The Need for the Proposed Action

The proposed exemption from the requirements pertaining to recombiners and the hydrogen purge system, and their associated removal from the design basis, would improve the safety focus at TMI–1 during an accident, and provide for a more effective and efficient method of maintaining adequate protection of public health and safety by simplifying the Emergency Plan and Emergency Plan Implementing Procedures. This would reduce the operators' post-accident burden and allow them to give higher priority to more important safety functions following postulated plant accidents.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no environmental impacts associated with the removal of the recombiners and hydrogen purge system from the TMI–1 design basis.

The proposed action will not significantly 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. It does not 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 NRC 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

The action does not involve the use of any resources not previously considered in the Final Environmental Statement for TMI–1, dated December 1972.

Agencies and Persons Consulted

On December 11, 2001, the staff consulted with the Pennsylvania State official, Mr. Michael Murphy of the Pennsylvania Bureau of Radiation 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 letter dated September 20, 2000, as supplemented by letters dated August 2 and September 28, 2001. 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 Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of January 2002.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate l, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–848 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 24–26, 2002, Hawthorn Suites, 6435 Westwood Blvd., Orlando, Florida, in Conference Room Magnolia A.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, January 24, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss matters related to future plant designs, including: regulatory challenges associated with the licensing of future plant designs (e.g., Pebble Bed Modular Reactor and Gas Turbine Modular Helium Reactor); use of PRA and defense-in-depth concept for advanced reactor designs; and issues related to Westinghouse AP1000 design. Also, it will discuss the NRC Safety Research Program, including proposed advanced reactor research plan, new areas of research, and draft ACRS report to the Commission on the NRC Safety Research Program.

Friday, January 25, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the use of formal decision analysis and the role of SAPHIRE Code in the risk-informed regulatory structure. Also, it will discuss matters associated with core power uprates, including: use of risk information in evaluating power

uprate applications; criteria to be used by the ACRS in endorsing power uprates including PWR power uprates expected in the future; and lessons learned from the review of power uprate applications.

Saturday, January 26, 2002—8:30 a.m.—12:30 p.m.

The Subcommittee will discuss the significance determination process (SDP), including: need for an SDP based on low-power and shutdown operations PRAs or other shutdown management tools; peer review of SPAR models and SDP worksheets; and thresholds for performance indicators. Also, the Subcommittee will discuss adequacy of the process for conducting ACRS business.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee.

Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designed Federal Official, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 8, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–846 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45239; File No. SR–NASD–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Material Regarding Interfering With the Transfer of Customer Accounts

January 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2001, 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'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation proposes to interpret NASD Rule 2110 to prohibit members from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

The text of the proposed rule change appears below. New text is in italic.

* * * * *

IM 2110–7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

NASD Regulation represents that, as a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, NASD Regulation asserts that the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, NASD Regulation represent when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may request that the registered representative's former firm transfer their accounts to the registered representative's new firm so that the clients may continue their relationship with the registered representative. NASD Regulation asserts that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new employer, or soliciting clients to transfer their accounts to the registered representative's new firm, sometimes seeks a court order to prevent the transfer of accounts to the registered representative's new firm.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to

NASD Regulation asserts that in some cases members have obtained relief in the form of court orders requiring the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. NASD Regulation asserts that members also have obtained court orders requiring the registered representative's new firm to send letters to customers that may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

NASD Regulation believes that it is inconsistent with the high standards of commercial honor and just and equitable principles of trade mandated by NASD Rule 2110 for a member, in the context of an employment dispute with a former registered representative, to seek to override a customer's request to transfer his or her account by obtaining a court order stopping the transfer. NASD Regulation believes that customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts. Moreover, NASD Regulation believes that customers whose account transfer requests have been delayed in this manner could be deprived of brokerage services and access to their accounts while their registered representative and his or her former firm attempt to resolve an employment dispute.

In NASD Notice to Members 79–7 (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. NASD Regulation believes that obtaining court orders to prevent customers from following a registered representative to a different firm are similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this practice, the NASD submits this proposed rule change to adopt Interpretive Material 2110–7, which would state that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. The proposed rule change would not affect the operation of Rule 11870 (governing customer account transfers). NASD Regulation represents that members would continue to have the ability to delay or take exception to account transfers in situations where, for example, the account contains nontransferable assets or the transfer request provides information that is inadequate to identify the account to be transferred.[4]

NASD Regulation represents that the proposed rule change does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Similarly, NASD Regulation believes that the proposal would not prevent a firm from enforcing employment agreements with former representatives. For example, NASD Regulation represents that a member could seek an injunction against a former registered representative and/or his or her new firm to prohibit solicitation of the member's customers if the registered representative had signed an employment contract agreeing not to solicit those customers. Rather, NASD Regulation represents that the proposed rule change is limited to restricting a member from interfering with a customer's right to transfer his or her account in the context of an employment dispute, once the customer has requested the transfer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that member firms that seek to override a customer's request to transfer his or her account to a new firm in the context of an employment dispute with a former registered representative violate NASD Rule 2110. NASD Regulation believes that this proposed rule change is necessary to protect investors and the public interest with respect to transfers of customers accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On May 22, 2001, NASD Regulation published Notice to Members 01–36 (''NTM 01–36'') seeking comment on a proposed interpretive material to NASD Rule 2110 that would state:

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to take any action that, directly or indirectly, interferes with a customer's ability to transfer his or her account, including seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

The comment period expired on July 5, 2001. Eighty-five comments were received in response to the notice. Of the 85 comments received, 67 agreed that customers should have the ability to move their accounts to new firms without interference from the member firm holding the account. These commenters expressed the view that a firm should not be able to override a customer's decision to move his or her account to a new firm.

Other commenters, while generally supportive of a customer's right to transfer an account to his or her brokerage firm of choice, raised concerns that the language of the proposed interpretative material could impede a member's ability to collect debts and enforce liens against a customer's account. These commenters suggested that the proposed interpretative material should not prevent a member from interfering with a customer's ability to transfer his or her account to avoid paying debts accrued in the account or to evade a lien on assets held in the account. Because

seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending before the SEC. NASD Regulation represents that the (instant) proposed rule change would not conflict with or affect the operation of Rule 10335 (i.e., the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes), but rather would address the substantive problem of customer harm resulting from firms obtaining temporary injunctive relief that prevents customers from transferring their accounts.

[4] The SEC recently approved amendments to NASD Rule 11870 that facilitate the transfer of customer accounts containing third party proprietary products by allowing a firm receiving a customer account from another firm to assess whether the account contains assets that the receiving firm is unable to support, and to inform the customer of his or her available options concerning those assets. *See* Exchange Act Release No. 44787 (September 12, 2001), 66 FR 48301 (September 19, 2001).

[5] 15 U.S.C. 78o–3(b)(6).

NASD Regulation did not intend to interpret rule 2110 in a manner that would affect the ability of members to collect debts or enforce liens against customers, the language contained in NTM 01–36 has been modified for this proposed rule change to clarify the inapplicability of the proposed rule change in these contexts.

Numerous commenters described other situations in which they thought a member should be able to take action to stop a customer from transferring his or her account. NASD Regulation represents that existing NASD rules address many of these situations. In certain other situations described by commenters, NASD Regulation believes that the right of a customer to transfer his or her account, once the customer has requested the transfer, should take precedence. For example, some commenters believed that a member should be able to interfere with a customer's ability to transfer his or her account to follow the member's registered representative to a new firm if the registered representative did not disclose to customers the consequences of the transfer (e.g., transfer fees and manner of disposition of any non-transferable assets).

While this scenario raises concerns, NASD Regulation believes that the current regulatory scheme addresses these concerns. NASD Regulation represents that firms are required to deliver to customers information regarding the applicable fees for opening, maintaining and closing an account. In addition, NASD Rule 11870 requires that customers requesting transfer of an account be notified of non-transferable assets in an account. NASD Regulation notes that anti-fraud provisions, as well as NASD Rule 2110, are available to address false or misleading statements a registered representative may have made to a customer to induce the customer to transfer his or her account.

Some commenters suggested that a member should be able to interfere with the customer's ability to transfer his or her account to follow one of the member's registered representatives to a new firm if the customer was the client of one of the member's other registered representatives, or if the customer opened the account to form a relationship with the member, and not with a particular registered representative. NASD Regulation believes that the customer's decision should be controlling, even under these circumstances.

Sixteen commenters objected to the adoption of an interpretative material that would prohibit members from interfering with a customer's request to transfer his or her account to a new firm when the customer sought to follow a registered representative to a new firm. Among the objections raised were concerns that such an interpretation would encourage registered representatives to breach employment contracts. NASD Regulation, however, represents that nothing in NTM 01–36 or this proposed rule change gives registered representatives the right to breach employment contracts or disclose personal nonpublic information in violation of law. Further, NASD Regulation notes that member firms may seek redress against a registered representative who acts in this manner by, for example, seeking from the registered representative monetary damages or an injunction from further misconduct.

Other commenters asserted that the proposal was inconsistent with the Gramm-Leach-Bliley Act of 1999 (''GLBA''), which requires companies to safeguard the confidentiality of customer information, because a company pursuing legal action against a registered representative pursuant to the member's obligations to protect customer information under GLBA could be in violation of the interpretation. NASD Regulation, however, believes that the proposed rule change does not prohibit a member from taking action against a registered representative as necessary to safeguard confidential customer information. NASD Regulation believes that the proposed rule change prevents a member from taking action to restrict a customer's ability to transfer his or her account to a new firm once the customer has requested the transfer. NASD Regulation believes that, to the extent that any improper sharing of confidential customer information occurred before the customer's decision to transfer, the firm could seek legal redress without interfering with the customer's decision to move his or her account.

Commenters objecting to the proposal also expressed concern that the interpretation deprived members of access to legal remedies available to resolve employment disputes. NASD Regulation represents that the proposed rule change does not deny to members remedies that assist in resolving employment disputes between members and their former registered representatives; the proposed rule change articulates the view of the Association that it is inconsistent with just and equitable principles of trade for a member to harm customers as a means of resolving employment disputes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [6] and paragraph (f)(1) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2001–95 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–883 Filed 1–11–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(1).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45251; File No. SR–NYSE–2001–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 902 To Permit the Submission of Member to Member Coupled Orders in Crossing Session I in Order To Close Out Error Positions

January 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2001, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 NYSE proposes to amend NYSE Rule 902, Off-Hours Trading Orders, to permit the submission of member to member coupled orders in Crossing Session I in order to close out error positions. The text of the proposed rule change is below. Proposed new language is in italic.

Rule 902. Off-Hours Trading Orders

(a) Entry of Orders

(i) Closing-Price Orders

Subject to Rule 906 (Impact of Trading Halts on Off-Hours Trading), a member or member organization may enter into the Off-Hours Trading Facility a closing-price order at such times as the Exchange may specify.

(ii) Closing-Price Coupled Orders

(A) Subject to Rule 906, a member or member organization may enter into the Off-Hours Trading Facility a closing-price order to buy coupled with a closing-price order to sell the same quantity of the same security for execution against each other. However, except for those orders defined in paragraphs (ii)(B) *and (C)* of this rule, a member or member organization may not so enter such coupled orders if both such orders are for an account in which any member or member organization, or any ''associated party'' (as paragraph (b)(ii) of Rule 800 (Basket Trading: Applicability and Definitions) defines that term), has a direct or indirect interest.

(B) A member or member organization may enter a closing-price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization which has agreed to offset all or part of any market-on-close imbalance that existed in the stock prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session.

(C) A member or member organization may enter a closing price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization where such member or member organization is acting to offset a transaction made in error. Both parties to the closing price transaction must maintain a specific written record that the purpose of the coupled order was to close out an error.

(iii) Aggregate-Price Coupled Orders

A member or member organization may only enter into the Off Hours Trading Facility an aggregate-price order to buy (sell) that is coupled with an aggregate-price order to sell (buy) the same quantities of the same securities.

(b)–(g) No change.

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 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

In SR–NYSE–99–25,[3] the Commission approved initiatives to strengthen the regulation of activities of members on the Exchange Floor (''Floor''). The initiatives consisted of amendments to NYSE Rule 134, Differences and Omissions—Cleared Transactions (''QTs''), and a new rule, NYSE Rule 407A, Disclosure of All Members Accounts. The Exchange is now proposing an amendment to its after-hours crossing session procedures to facilitate the handling of error transactions on the Floor.

In 1991, the Exchange established its ''Off-Hours Trading Facility.''[4] One of its stated purposes was to recapture order flow in NYSE listed securities that was being executed offshore. The Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4 p.m. trading session. ''Crossing Session I'' is the session from 4:15 p.m. to 5 p.m. during which orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a trading halt under NYSE Rule 80B, Trading Halt Due to Extraordinary Market Volatility) or is halted after 4 p.m.[5] During Crossing Session I, orders may be entered via SuperDOT and may be canceled up to 5 p.m. Eligible orders on the specialist's book will automatically participate in Crossing Session I.

NYSE Rule 902, Off-Hours Trading Orders, currently allows coupled orders to buy and sell the same amount of the same security to be entered into Crossing Session I. Moreover, NYSE Rule 902 provides that coupled orders cannot be entered into Crossing Session I if each side of the coupled order is for the account of a member or member organization. The only exception currently provided for in NYSE Rule 902 is a situation in which a member or member organization and a specialist member organization enter a coupled order in a stock, which has the effect of offsetting all or a part of any market-on-close imbalance that existed in such stock prior to the official closing of the 9:30 a.m. to 4 p.m. trading session.

The Exchange believes it is appropriate to add an additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 44769 (September 6, 2001), 66 FR 47710 (September 13, 2001); 44427 (June 14, 2001), 66 FR 33282 (June 21, 2001); and 42381 (February 3, 2000), 65 FR 6673 (February 10, 2000).

[4] *See* Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994).

[5] The NYSE confirmed that the new exception to NYSE Rule 902(a)(ii) (embodied in proposed NYSE Rule 902(a)(ii)(C)) is subject to NYSE Rule 906, Impact of Trading Halts on Off-Hours Trading, and, therefore, the proposed exception does not permit trading of a security that is subject to a trading halt under NYSE Rule 906(a) or (b). Telephone discussion between Donald Siemer, Director Rule Development, Market Surveillance Division, NYSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (January 7, 2002).

exception in NYSE Rule 902 to permit a coupled order to be submitted in Crossing Session I to address situations where a member or member organization wishes to close out an error at the closing price on the Exchange, and the specialist has agreed to take the other side of the trade. Both parties to the coupled order would be required to maintain a specific written record that the purpose of the coupled order was to close out an error.

An error discovered at or around the close can be closed out promptly at the closing price, ensuring that the error is closed out in a timely manner. Such a procedure is also a benefit to members in that it ensures that the member does not have to bear any overnight market risk with respect to the error. Thus, the proposed procedure is timely, efficient, and reduces market risk to members.

This proposed procedure is a limited exception available only to facilitate timely resolution of errors and is not intended for any other purpose. Therefore, it is not a means whereby professional traders in the normal course of trading may step ahead of retail or any other investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange 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 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.

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 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.

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 Exchange. All submissions should refer to File No. SR–NYSE–2001–49 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–884 Filed 1–11–02; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular on Internet Communications of Aviation Weather and NOTAMs

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed advisory circular.

SUMMARY: The Department of Transportation, in accordance with 49 CFR 1.47, delegated responsibility for aviation safety oversight to the Federal Aviation Administration (FAA). The FAA has proposed the development of Advisory Circular (AC) 00-xx, Internet Communications of Aviation Weather and NOTAMs, that describes the process for any person or organization providing access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become and remain a Qualified Internet Communications Provider (QICP).

DATES: Comments must be received on or before February 13, 2002.

ADDRESSES: Written comments are invited on all aspects of the proposed AC. Commenters must identify draft AC 00-xx, Internet Communications of Aviation Weather and NOTAMs. Send or deliver all comments on the proposed AC to the following location: Federal Aviation Administration, Aerospace Weather Policy Staff, ARS–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Albersheim, FAA, Aerospace Weather Policy Staff, ARS–100, 800 Independence Ave., SW., Washington, DC 20591, 202–385–7704, Steven.Albersheim@faa.gov.

SUPPLEMENTARY INFORMATION: Aviation weather information is available on the Internet from a variety of government and vendor sources with minimal quality control. Users of the National Airspace System, dispatchers, pilots and air traffic controllers/specialists have expressed interest in the ability to utilize the Internet to retrieve aviation weather text and graphic products for operational decision-making. The FAA proposes to establish the process in an AC for providers who disseminate aviation weather data and NOTAMs via the Internet to become QICPs for the purpose of ensuring the reliability, accessibility and security of the data and encouraging the identification of the approval status of products. The proposed AC will provide information on the QICP process and recommended practices as well as the procedures for a provider to maintain QICP status. The FAA Aerospace Weather Standards Staff (ARS–200) proposes to maintain a current list of all QICPs on a designated Web page accessible by the general public.

Issued in Washington, DC, on January 8, 2002.

David Whatley,

Director, Aerospace Weather Policy & Standards, Air Traffic System Requirements Service.

BILLING CODE 4910–13–P

Advisory Circular

U.S. Department of Transportation
Federal Aviation Administration

Subject: INTERNET COMMUNICATIONS OF AVIATION WEATHER AND NOTAMS

Date: xxxxx **Initiated by:** ARS-100

AC No.: 00-xx

1. PURPOSE. This Advisory Circular (AC) describes the process for any person or organization that provides access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become a Qualified Internet Communications Provider (QICP).

The FAA Aerospace Weather Standards Staff (ARS-200) is responsible for establishing and maintaining a current list of all QICPs on a designated Web page accessible by the general public.

This AC pertains only to Internet communications between a civil aviation user and a QICP. This AC addresses data quality only to the extent of considering QICP security practices to protect data from unauthorized modification and encouraging the identification of the operational or experimental status of QICP products. The FAA Web page containing the current list of all QICPs contains a notice that being listed as a QICP does not mean that the quality of the QICP data (e.g., accuracy, timeliness or content) is certified or otherwise approved by the FAA.

Like all advisory material, this AC is not mandatory and does not constitute a regulation. Definitions used in this AC are contained in Appendix 1.

2. GENERAL. A person or organization that accomplishes and maintains the following as they pertain to the provider's facility (i.e., all hardware, software and Internet connectivity under the applicant's direct control) may become an approved QICP:

a. **Reliability** means users are able to retrieve requested data from the provider with no outage lasting longer than 10 minutes, and no more than 30 minutes of total outages (including outages due to maintenance) in any continuous 3-month period.

b. **Accessibility** means turnaround time within the provider's facility. The provider should be capable of initiating transmission of requested data during transactions with 100% of its users within 2 minutes.

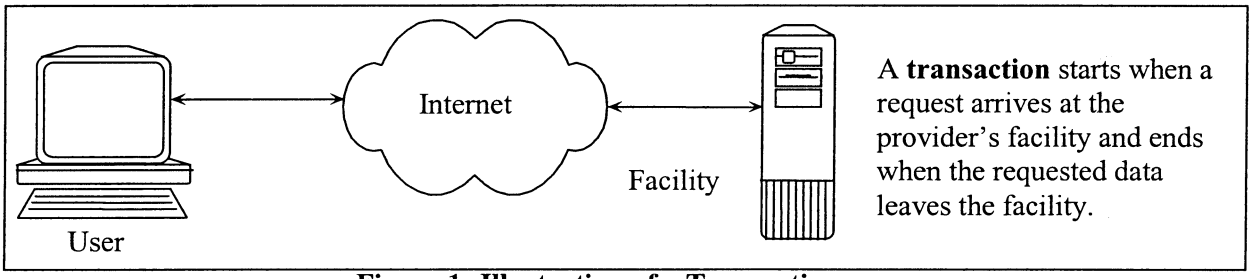

Figure 1: Illustration of a Transaction

c. **Security** means providing Web site authentication and maintaining data integrity. The provider should implement server digital certificate technology consistent with the X.509 certificate standard and Secure Sockets Layer protocol. In addition, the provider should establish and implement security practices to prevent unauthorized access to or modification of provider data, software and hardware.

1) Use of the Public Internet carries certain risks to both QICPs and users. Below are some of the more common risks:

a) The user receives intentionally corrupted data from an invalid source instead of original data from a legitimate source, not detecting the difference. The invalid source captured the original data en route and replaced it with intentionally corrupted data.
b) The user receives forged or fake data that purports to be from a legitimate source but is actually generated by an invalid source.
c) The user gets original data from a legitimate source, but it is inaccurate; it causes a problem in the user's operation and, subsequently, the source denies sending it in order to avoid culpability for the user's loss.

2) A server digital certificate mitigates these risks by providing Web site authentication and two-way data integrity during the transaction between the QICP and the user.

3. RECOMMENDED PRACTICES.

QICPs should consider user authentication (via browser digital certificate or username/password) as needed to determine the identity of the requester. In addition, QICPs should maintain a retrievable archive of Web server log files as well as data received and provided in each transaction for a period of no less than 15 calendar days after the date of that transaction. In the event of receipt of notification of an accident, incident or overdue aircraft, or upon the request of the FAA or the National Transportation Safety Board (NTSB), the provider should retain the data related to that aircraft indefinitely, or until such time that the destruction of the data is authorized by law. The QICP should make this data available in the form of a readable certified true copy upon request of the FAA, the NTSB or a Federal, state or local law enforcement agency.

With the increasing availability of developmental weather products, QICPs are encouraged to clearly identify the operational or experimental status of each product. This may be done by partitioning the Web site, by grouping products or by labeling each individual product. Users are encouraged to require such identification by QICPs.

4. PROCESS FOR QUALIFICATION. To become a QICP, applicants should follow the qualification process described herein.

a. **Steps to Becoming a QICP.**

1) Submit an application certified by a responsible official to ARS-200 containing the following:
   a) Service Description
   b) Security Plan
   c) Capability Demonstration Plan
   d) Ongoing Maintenance Plan

2) Satisfactorily complete the Capability Demonstration.

b. **Attachments to the Letter of Application**

1) **Service Description**: Describes how the applicant intends to accomplish the items in paragraph 2 and (optionally) the recommended practices in paragraph 3. The Service Description should include, but is not limited to, the following items:

   a) Intended user(s) or user class(es), estimated number of users in each user class
   b) Server architecture (i.e., hardware, software)
   c) Network management software
   d) Server digital certificate technology
   e) User authentication (optional)
   f) Archival of Web server log files and transaction data (optional)
   g) Identification of product status as either operational or experimental (optional)

2) **Security Plan**: Describe how the applicant plans to prevent unauthorized access to or modification of applicant's data or facility (e.g., software, hardware, networks, etc.). These practices should include, but are not limited to, the following:

   a) Vulnerability assessments
   b) Risk assessments
   c) Security tests
   d) Disaster recovery and contingency measures

3) **Capability Demonstration Plan:** Describes how the applicant plans to demonstrate that it can or has accomplished the items in paragraph 2 ["General"] and (optionally) the Recommended Practices, usually through a trial period of operations. An alternate demonstration method may be accepted by ARS-200 upon request of the applicant (e.g., documentation of prior Internet site performance). The Demonstration Plan should contain the following:

   a) Primary points of contact for the demonstration
   b) Period of time, including starting and completion dates
   c) Performance statistics to be collected during the demonstration. (Note: These statistics could be collected using the same process as in paragraph 4.b.4)c) below.)
   d) Proposed reporting format

4) **Ongoing Maintenance Plan:** Describes how the applicant plans to adequately maintain its Internet service and operation. This plan should include at least the following:

   a) The names, titles and resumes of responsible personnel, with descriptions of their duties and responsibilities
   b) System maintenance procedures

c) Quality Assurance Plan describing the process to collect and maintain performance statistics for the items in paragraph 2 ["General"] and to provide them to ARS-200 semiannually or upon request

d) Quality of Service (QOS) agreement(s) with each user or user class, specifying the items in paragraph 2 and providing user complaint procedures in the event QICP service and operation are not adequate

c. **Application Review.** Upon receipt of the application, ARS-200 acknowledges receipt, reviews the submission and requests additional information if needed. ARS-200 plans to advise the applicant in writing of its findings within 60 calendar days from receipt. If unable to complete the review within this period, ARS-200 provides the applicant with a revised completion date. If the application package is lacking in some way, ARS-200 returns the submission to the applicant with recommendations for revision. If the application package is sufficient, ARS-200 notifies the applicant to proceed with its capability demonstration.

d. **Capability Demonstration.** Upon receiving notification to proceed, the applicant may demonstrate its Internet performance capability, usually by means of a trial period. During the trial period, the provider's Web site should be fully operational. During and after the trial period, the applicant should report demonstration results to ARS-200 to document satisfactory accomplishment of the items contained in this AC.

e. **Application Disposition**

1) Upon successful completion of the capability demonstration, ARS-200 issues a letter approving the applicant as a QICP for a period of 6 months and adds the applicant's name to the QICP list maintained by ARS-200 on a designated Web page.

2) Should the FAA find the capability demonstration to be insufficient, ARS-200 issues a Letter of Denial, indicating the reasons for the denial. The form and content of any subsequent re-application are defined in the Letter of Denial.

5. ONGOING MAINTENANCE

QICPs should demonstrate ongoing maintenance of QICP status by collecting facility performance statistics and providing them to ARS-200 semiannually or upon request (e.g., following ARS-200 receipt of a user QOS complaint). ARS-200 reviews QICP statistics to verify continued performance maintenance; if verified, ARS-200 retains the provider's name on the QICP list for an additional period of 6 months. If a QICP does not adequately maintain its service and operation, ARS-200 notifies the provider in writing that QICP status may be rescinded unless the provider provides documentation within 30 calendar days that the deficiency has been corrected. If such documentation is not received or is unsatisfactory, ARS-200 may rescind QICP status and remove the provider's name from the QICP list.

QICPs should acknowledge and address user QOS complaints within 14 calendar days of receipt, and forward user QOS complaints to ARS-200 within 30 calendar days of receipt with an explanation of actions taken. ARS-200 and QICPs may collaborate to resolve any identified performance deficiencies. QICP failure to properly process or resolve QOS complaints may result in ARS-200 taking action as described in the preceding paragraph.

6. PAPERWORK REDUCTION ACT STATEMENT. As described in this AC, the FAA collects information contained in initial QICP applications and subsequent QICP reports of semi-annual facility performance statistics, archived data and user complaint corrective actions. The information is collected to enable ARS-200 to process initial QICP applications and determine continued QICP maintenance of its

service and operation for the transmission of aviation weather and NOTAMs via the Internet; collected information may also be used by the FAA, the NTSB or law enforcement agencies following an accident, incident or overdue aircraft. The reporting burden for each QICP is estimated to average 568 hours during the initial year and 274 hours each subsequent year. Information submission is totally voluntary; however, failure to provide the information may result in the denial or loss of QICP status. 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 Office of Management and Budget (OMB) control number. The OMB control number for AC XX is 2120-0672.

7. ADDITIONAL INFORMATION

Questions or comments concerning this AC should be directed to:
FAA, Aerospace Weather Policy Staff (ARS-100)
800 Independence Avenue, SW
Washington, DC 20591
(202) 385-7704

APPENDIX 1. DEFINITIONS OF TERMS

This appendix contains definitions of terms used throughout this AC.

Browser Digital Certificate	Electronic equivalent of an ID card obtained employing digital certificate technology and installed on a user's browser—used in conjunction with a public key encryption system to automatically authenticate the user's identity.
Facility	All hardware, software and Internet connectivity under the provider's direct control.
Log File	A Web server file containing access information regarding the activity on that server.
NOTAM	Aeronautical information that could affect a pilot's decision to make a flight. It includes such information as airport or primary runway closures, changes in the status of navigational aids, radar service availability, and other information essential to planned en route, terminal or landing operations. It can also contain mandatory emergency air traffic rules issued pursuant to the Code of Federal Regulations, Title 14, Section 91.139.
Provider	A person or organization (including a government agency) which supplies aviation weather and NOTAMs to a civil aviation user.
Public Internet	Any and/or all of the Internet sites that are accessible by any Internet connection. A distinguishing feature is its use of a set of protocols called TCP/IP (Transmission Control Protocol/Internet Protocol).
Secure Sockets Layer Protocol	A security protocol that provides Web site authentication, message integrity and message privacy over the Internet—allows provider/user applications to communicate while preventing message forgery, tampering and eavesdropping.
Server Digital Certificate	Electronic equivalent of an ID card obtained employing digital certificate technology and installed on a Web site server—used in conjunction with a public key encryption system to automatically authenticate the Web site's identity and ensure two-way data integrity during a transaction.
Transaction	All data exchanged between the user and provider beginning when the user's request arrives at the provider's facility and ending when the requested data leaves the facility.
User	A person or organization that requests and receives aviation weather and NOTAMs from a provider.
User Authentication	Technique by which access to Web site resources requires a user to have a browser digital certificate or to enter a username and password as identification.
Web Site Authentication	Technique by which access to Web site resources requires a server digital certificate as identification.
X.509 Certificate Standard	An Internet industry standard that defines what information can go into a digital certificate and describes the information format.

[FR Doc. 02–861 Filed 1–11–02; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2002, Through December 31, 2002

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2002, through December 31, 2002, will remain at 25 percent of covered aviation employees for random drug testing and 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold N. Schwartz, Office of Aerospace Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5970.

Discussion: The FAA Administrator set the minimum random drug testing rate for 2002 at 25 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. The FAA Administrator set the minimum alcohol testing rate for 2002 at 10 percent because the data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 0.5 percent.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random drug and alcohol percentage testing rates are determined please refer to the Code of Federal Regulations Title 14: part 121, Appendices I and J.

Dated: January 8, 2002.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 02–864 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pilot Program To Permit Cost-Sharing of Air Traffic Modernization Projects

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of program guidance for air traffic modernization cost-sharing pilot program for fiscal years 2002 and 2003.

SUMMARY: On December 6, 2000, the FAA issued proposed program guidance on Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21), which authorizes a pilot program for cost-sharing of air traffic modernization projects. The initial program was for fiscal years 2001, 2002, and 2003. The FAA is now issuing updated program guidance based upon the lessons learned from the first year of program implementation and is requesting sponsors' expressions of interest for cost-sharing projects for fiscal years 2002 and 2003. The purpose of section 304 is to improve aviation safety and enhance mobility by encouraging non-Federal investment on a pilot-program basis in air traffic control facilities and equipment. Under the pilot program, the Secretary of Transportation may make grants to eligible project sponsors for not more than ten eligible projects. Each eligible project is limited to Federal funding as highlighted in section 2.3.1 with the Federal cost share not to exceed 33 percent of the project's facilities and equipment (excluding operations and maintenance) cost. A project sponsor may be a public-use airport (or a group of public-use airports), or a joint venture between a public-use airport (or a group of public-use airports) and one or more U.S. air carriers.

DATES: The FAA's Air Traffic System Requirements Service should receive initial sponsors' expressions of interest on/or before February 8, 2002. Failure to meet the proposal submission deadline will not result in automatic disqualification, but may cause disapproval due to decisions made by the FAA on proposals in hand when Phase 1 deliberations are made. Potential sponsors are encouraged to submit proposals as soon as possible.

ADDRESSES: Sponsors' expressions of interest/proposal should be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of Aviation Policy and Plans (Attention: APO–200), 800 Independence Ave SW., Washington, DC 20590. Electronic submissions will be accepted for Phase 1 expression of interest/proposal, but must be followed up with a signed paper copy within five working days, to the address listed above. The Phase 1 electronic submissions should be mailed to *Debra.Griffith@faa.gov.* Electronic submissions for Phase 2 formal application will not be accepted. Deliveries may be made between 8:30 am and 5 pm weekdays, except Federal holidays.

An electronic copy of this notice may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

FOR FURTHER INFORMATION CONTACT: Debra Griffith or Joann Kansier (202–385–7600), Research and Requirements Development Directorate (ARQ), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

1. Background

In performing its mission of providing a safe and efficient air transportation system, the FAA operates and maintains a complex air traffic control system infrastructure. Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21) authorizes a pilot program to permit cost-sharing of air traffic modernization projects, under which airports and airport/airline joint ventures may procure and install facilities and equipment in cooperation with the FAA. The purpose of Section 304 is to establish a pilot program, to improve aviation safety and enhance mobility in the air transportation system by encouraging non-Federal investment in air traffic control facilities and equipment. The pilot program is intended to allow project sponsors to achieve accelerated deployment of eligible facilities or equipment, and to help expand aviation infrastructure.

1.1 Program Participants in Selection Cycle—Round One

The following airport/Projects were selected to participate in round one of the AIR–21 Cost Share Pilot Program:

- Tampa International Airport—upgrade RW18L ILS to Cat II/III
- Minneapolis-St Paul International Airport—ALSFs on RW12L and 12R
- Chicago O'Hare International Airport—develop surface movement management system based on multilateration technology
- John F. Kennedy Airport—feasibility study and environmental issues analysis for RW22R and La Guardia Airport RW22/RW 13 ILS upgrades; La Guardia RW31 Glideslope
- Olive Branch Airport, Mississippi—construct Air Traffic Control Tower

The average FAA share for a round one project is $1.5 million. The FAA is authorized to approve five more projects under Section 304 of AIR–21. Those

sponsors whose projects were approved in the first round may submit additional proposals expanding upon their initial projects. All proposals that were not accepted during the FY 01 consideration will be reconsidered upon a written request from the sponsor. All sponsors who anticipate resubmitting last year's request should review the updated criteria in sections 2.1 and 2.2 before submission and modify the proposal as appropriate. Sponsors may submit additional proposals if they desire or update their original proposal.

2. Final Program Guidance

This section restates, in part, the statutory language of AIR–21 Section 304 and outlines FAA's supplementary criteria for the pilot program. The sponsor eligibility, project eligibility, and evaluation and screening criteria are outlined in Sections 2.1, 2.2 and 2.6 respectively of this notice.

2.1 Eligible Project Sponsors

2.1.1 Statutory Provisions for Sponsor Eligibility

The term 'project sponsor' means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

2.1.2 Supplementary FAA Criteria for Sponsor Eligibility

An eligible project sponsor is a public-use airport (or group of airports), either publicly or privately owned, action on its own or in a joint venture with one or more U.S. air carriers. All landing facilities meeting these criteria are eligible, including but not limited to commercial service airports, reliever airports, general aviation airports, heliports, etc. All eligible sponsors are encouraged to participate. If selected for the pilot program, the sponsor must be willing to enter into a Memorandum of Agreement with the FAA outlining the specific goals to be accomplished, the roles and responsibilities of each party, schedule milestones, and funding contributions of the parties. An eligible sponsor must have an available source of funds to execute the pilot program.

2.2 Eligible Projects

2.2.1 Statutory Provisions for Project Eligibility

The term 'eligible project' means a project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include:

a. Airport-specific air traffic facilities and equipment, including local area augmentation systems,* instrument lands systems, weather and wind shear detection equipment, lighting improvements, and control towers

b. Automation tools to effect improvements in airport capacity, including passive final approach spacing tools* and traffic management advisory equipment; and

c. Facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

* Note these projects will be eligible, assuming availability and viability of the equipment with the time limitation highlighted in 2.2.2.b.

2.2.2 Supplementary FAA Criteria for Project Eligibility

a. The project should be consistent with FAA's air traffic equipment/systems infrastructure and architecture and should be a validated project of a FAA program. The project, when commissioned, should provide measurable benefits that benefit regional or local objectives/interests and the FAA NAS.

b. The project shall be initiated within two years of project approval and completed/commissioned within five years of project approval (allowing for an environmental impact study (if necessary), acquisition, supply support, training programs, etc.).

c. Equipment and facilities should meet applicable FAA advisory circulars and specifications.

d. The project should serve the general welfare of the flying public; it should not be used for the exclusive interest of a for-profit entity.

e. Any facility/equipment acquired under the project should be a new asset, not an asset that the sponsor has already acquired or committed to acquiring.

f. The project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life.

g. The cost-share program is not the correct forum for requesting development of RNAV procedures.

h. A sponsor may submit a multiple component project (as outlined in paragraph 2.5) where each component forms part or all of an integrated system. The FAA reserves the option to accept one or multiple components of a proposal.

i. A project may not be co-mingled with other FAA cost-sharing programs (e.g., the provisions of AIR–21 Section 131 that authorize cost-sharing programs for airport traffic control tower operations and construction).

j. All equipment and structures should meet appropriate OSHA standards for employee safety and fire protection. Where land is involved, the property should meet all environmental compliance requirements, including noise, hazardous material, property access, and zoning rights.

k. A project should not increase the controller or airways facility workforces during the pre-transfer period (see section 2.4 below titled ''Transfer of Facility or Equipment to FAA'').

2.3 Funding

2.3.1 Statutory Provisions for Funding

The Federal share of the cost of an eligible project carried out under the pilot program shall not exceed 33 percent. No project may receive more than $15,000,000 in Federal funding under Section 48101(a) of Title 49, United State Code (FAA's Facilities and Equipment appropriation). The Secretary shall use amounts appropriated under Section 48101(a) for fiscal years 2001 through 2003 to carry out the program.

The sponsor's non-Federal share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to Section 40117 of Title 49, United States Code (passenger facility charges).

2.3.2 Supplementary FAA Criteria for Funding

FAA is not obligated to fund one-third of the total project costs; rather, FAA's share may not exceed this threshold. The project sponsor must provide two-thirds or more of the total project cost. The Federal and non-Federal shares of project cost may take the form of in-kind contributions. Equipment in FAA's inventory that has not been previously deployed qualifies as eligible equipment. If selected for the pilot program, a sponsor may use passenger facility charge (PFC) revenues to acquire and install eligible facilities and equipment, but not to fund their operation or maintenance. Normal PFC processing procedures under Federal Aviation Regulation 14 CFR Part 158 will be used to approve the imposition of a PFC or the use of PFC revenue as the non-Federal share of a pilot program project.

Project funding may be effected through a grant, a cooperative agreement, or other applicable instrument. Federal contributions applied to any other Federal project or grant may not be used to satisfy the sponsor's cost share under this pilot program.

The following criteria apply to the calculation of the cost-sharing ratio:

a. Project are limited to those costs that the FAA would normally incur in conventional facilities and equipment funding (e.g., if land/right-of-way must be acquired or leased for a project, its cost can be included in the cost-sharing ratio only if FAA would otherwise incur it in conventional program funding).

b. Operations and maintenance costs of the project, both before and after any sponsor-elected project transfer to the FAA, will not be considered as part of the cost-share contribution.

c. Non-federal funding may include cash, substantial equipment contributions that are wholly utilized as an integral part of the project, and personnel services dedicated to the proposed project prior to commissioning, as long as such personnel are not otherwise supported with Federal funds. The non-federal cost may include in-kind contributions (e.g., buildings). In-kind contributions will be evaluated as to whether they present a cost that FAA would otherwise incur in conventional facilities and equipment funding.

d. Aside from in-kind contributions, only funds expended by the sponsor after the project approval date will be eligible for inclusion in the cost-sharing ratio.

e. Unless otherwise specified by these criteria, the principles and standards for determining costs should be conducted in accordance with OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments.*

f. As with other U.S. DOT cost-sharing grants, it is inappropriate for a management/administrative fee to be included as part of the sponsor's contribution. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to support the project.

By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. FAA funding decisions will be made in concert with the project evaluation and project selection processes discussed later in this notice. FAA may choose to use specifically appropriated funds, to re-program funds from within existing facilities and equipment project appropriations, or to fund from within existing budget line items.

Unless otherwise stipulated in the agreement executed between the sponsor and the FAA, liability for cost over-runs will be shared between the FAA and the sponsor in accordance with their project cost shares.

The U.S. Department of Transportation and the Comptroller General of the United States have the right to obtain and assess all documents pertaining to the use of Federal and non-Federal contributions for selected projects. Sponsors should maintain sufficient documentation during negotiations and during the life of the project to substantiate costs.

2.4 Transfer of Facility or Equipment to FAA

2.4.1 Statutory Provisions for Facility or Equipment Transfer

Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the FAA, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The FAA shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the FAA in accordance with criteria of the FAA.

2.4.2 Supplementary FAA Criteria for Facility or Equipment Transfer

Project transfers to the FAA will be at the sponsor's election and in accordance with the criteria listed below.

a. At the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect.

b. In the event of transfer, software code, data rights, and support tools should be provided to the FAA at no cost to the FAA.

If the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

2.5 Application Procedures

The following application procedures will be used when applying for the cost-share:

a. Application to the pilot program consists of two phases, as described below. The purpose of Phase 1 is to allow the FAA to gauge the level of interest, to provide preliminary responses to potential sponsors to avoid causing applicant sponsors to expend excessive resources on project applications that have very limited changes of acceptance because of need or cost, and to plan for subsequent program implementation. In Phase 1 the FAA will review the application based upon its individual merit.

b. The purpose of Phase 2 project review is to conduct comparative analysis of the individual applications accepted during Phase 1. In Phase 2, sponsors will provide more detailed applications, and final FAA evaluations/project selections will be completed.

c. Airport sponsors may submit multiple projects and projects with multiple components, but each piece of equipment/activity must be identified and costed separately and should be listed in priority order. An example of a multiple component project would be an instrument landing system (ILS) project that may include in addition to the ILS equipment, middle markers and runway lighting for a complete package. The FAA reserves the option to accept one or multiple pieces of each proposal.

d. Projects that would be good candidates for this program may include equipment and systems that monitor weather, support runway incursion reduction, and support regional interest.

e. Under this pilot program, either the FAA or the sponsor may acquire and/or install facilities or equipment. In the case where the FAA manages the procurement, existing FAA contracts will be used where possible.

f. Proposals for new air traffic control towers will only be considered if they enhance the National Airspace System. Per FAA Order 6030.1, FAA Policy on Relocation, movement of an existing air traffic control tower for the convenience/benefit of only the airport will not be considered. Requests for towers will be considered utilizing the criteria in Order 7031.2C, Airway Planning Standards Number One (APS–1).

2.5.1 Phase 1: Sponsor's Submission of Proposal and Initial Project Review

Proposal packages should be no more than 20 pages in length. Although not binding the Phase 1 submission should reflect accurate estimates of project cost and sponsor contributions. The FAA may verify with the sponsor the cost estimate if it does not appear to be consistent with the FAA's estimate, and thus provide the sponsor time to revalidate its proposal before Phase 2. Sponsors should submit written expressions of interest in accordance with the sections captioned **DATES** and **ADDRESSES** provided earlier in this notice. A sponsor's initial proposal should include the following:

a. Identity of sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures.

b. Description and location of the proposed project.

c. Statement of need for the project, including an assessment of the projected benefits—site-specific, regional, and the national airspace systems. Preferred project schedule, including start date, completion date, and any significant interim milestone dates.

d. Statement of intent to transfer the project to the FAA, including envisioned date, or intent not to transfer the project to the FAA.

e. Schedule of estimated project costs, including: (1) Up-front costs divided into proposed shares between the sponsor and the FAA, and (2) annual and life-cycle operations and maintenance costs (both before and after transfer if the sponsor elects to transfer the project to the FAA). Cost should be outlined separately for each major activity (e.g., each ILS).

f. Self-assessment of the ability to acquire and commit the non-Federal share of funding.

g. Brief description of sponsor's internal approval/coordination process for establishing a formal cost-sharing agreement with the FAA and the estimated time-frame for completion.

h. If requesting establishment of an air traffic control tower, sponsor must indicate how the facility is to be staffed. Acceptance for the Cost Share Pilot Program does not automatically qualify an airport for the FAA contract tower program to staff the tower with contract air traffic controllers.

The FAA will review and evaluate the expressions of interest submitted during Phase 1, using a panel of technical experts and senior managers. The panel will review the submission considering the technical feasibility, program feasibility, schedule, projected operational benefits, and cost. The FAA will contact the sponsor if it has questions or has suggestions on how the sponsor may improve its proposal. Following its evaluations and preliminary selections, the review panel will recommend to the Director of FAA's Airway Facilities Service and the Director of FAA's Office of System Architecture and Investment Analysis those applicant sponsors who should be invited to participate in Phase 2, as described below. These officials will notify and invite selected sponsors to participate in Phase 2. Following Phase 1, the FAA may conduct on-site visits to work with the sponsor in order to have a dialogue on the proposal before Phase 2 submission.

2.5.2 Phase 2: Formal Application and Selection of Projects

Only proposals that have been reviewed in Phase 1 will be considered during Phase 2. Phase 2 proposals should not be more than twenty pages in length. During Phase 2 each sponsor that has been invited to participate should submit an expanded application with the following elements needed by the FAA to evaluate the merits of each application.

a. *Project Description:* The project description should contain: (1) The identity of the submitting sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures; (2) project name and location; (3) a detailed project description.

b. *Projected Benefits:* All applications should describe the need for the project and demonstrate its safety, efficiency, capacity, productivity, and other benefits, as applicable, at the airport, regional, and system-wide levels. The sponsor may conduct its own analysis, may opt to summarize existing analyses from FAA's acquisition management system, and/or may use the investment criteria in FAA Order 7031.2C, Airway Planning Standard Number One.

c. *Economic Analysis:* Supporting the projected benefits review the applicant should conduct an economic analysis. The analysis should include a schedule of project costs, including: (1) Up-front costs broken down into proposed shares between the sponsor and the FAA; and (2) annual and life-cycle operations and maintenance costs before and after transfer to the FAA (if the sponsor elects to transfer). The level of effort devoted to the analyses should be tailored to the scope and cost of the project. For complex programs FAA guidance can be found in Report FAA–APO–98–4, *Economic Analysis of Investment and Regulatory Programs—Revised Guide,* and Report FAA–APO–98–8, *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*

d. *Schedule:* The Schedule should list all significant proposed project dates, including the start date, completion date, date of project transfer of the FAA (if applicable), and key interim milestone dates.

e. *Financial Plan:* The Financial Plan should contain: (1) The proposed local and Federal cost shares, (2) evidence of the sponsor's ability to provide funds for its cost share (e.g., approved local appropriation or Memorandum of Agreement); and (3) any commitment the sponsor might choose to offer for the assumption and liability of cost overruns aside from the liability criterion provided earlier in this notice.

f. *Letter of Commitment:* Sponsors should demonstrate a commitment to the project, as evidenced by a Letter of Commitment signed by all project participants (including any participating air carriers). The letter should, at a minimum, include a list of the participating agencies and organizations in the proposed project; the roles, responsibilities and relationship of each participant; and the name, address, and telephone number of the individual representing the sponsor.

g. *Letter of Acknowledgment/Support:* The application will include a letter of acknowledgment/support from the applicable State Department of Transportation and/or other appropriate jurisdiction (to avoid circumventing State and metropolitan planning processes). It is the intent of FAA Headquarters for the appropriate projects to include the FAA's Regional Office in the project review cycle. It would be in the best interest of the applicant to pre-coordinate the projects with the appropriate FAA Regional Office.

The FAA will review and evaluate the Phase 2 applications using a panel of technical program experts and senior managers based on the criteria outlined below in Section 2.6. Following its evaluations, the review panel will prioritize and recommend to the FAA's Associate Administrator for Air Traffic Services and the Associate Administrator for Research and Acquisition those applications that it believes should be accepted. If the FAA selects a project for inclusion in the pilot program, an agreement will be executed between the sponsor and the FAA.

2.5.3 Subsequent Application and Selection Cycles

If fewer than the statutorily-limited ten projects have been approved following the second round of Phase 1 and 2 applications, FAA will repeat the Phase 1 and 2 application processes, until the earlier of: May 15, 2003, or that point in time when the ten project limit is reached (see Schedule Summary in Section 2.7 below). The May 15, 2002, cutoff date is based on an allowance of time for FAA to process Phase 2 applications and make selections prior to the statutory authorization expiring at the end of fiscal year 2003. FAA cannot and does not extend any assurance or implication that any residual authority will remain following the first round of Phase 1 and 2 applications.

2.6 Application Evaluation and Screening Criteria

During Phase 1 the FAA will review each of the applications based upon the individual merit of the application. The FAA will consider the following elements in evaluating Phase 1 applications:

a. Compliance with statutory criteria, FAA's supplemental criteria, and application procedures.

b. Degree to which the project provides benefits to support the FAA's strategic goals for safety, efficiency, and mobility, as well as the national airspace system architecture.

c. Likelihood of project success.

d. Ability of sponsor to provide its cost share.

The Phase II review involves a comparative analysis of the individual applications to each other. Phase II application evaluation will include the following additional elements in evaluating the applications.

a. Benefit to the airport, region, and national airspace system.

b. Ease of administration (acquisition, installation, etc.).

c. Evidence that the project can be implemented in accordance with the proposed schedule.

d. Availability of FAA resources.

e. Degree of Federal leveraging (degree to which the proposal minimizes the ratio of Federal costs to total project costs).

f. Cost to the FAA: (1) up-front cost-share (a sponsor's willingness to pay a higher percentage of the project will increase its competitiveness when compared to other projects; and, if applicable, (2) post-transfer life-cycle operating and maintenance costs.

g. Equity and diversity with respect to project type, geography, and population served.

2.7 Schedule Summary

Milestone	Date
Second-Round of Applications	
Phase 1 Applications due to FAA	2/21/02
FAA Responses to Sponsors' Phase 1 Applications	4/22/02
Phase 2 Applications due to FAA	6/3/02
FAA Announcement of Second-Round Approvals	9/3/02
Third-Round of Applications (if needed)	
Phase 1 Applications due to FAA	12/13/2002
FAA Responses to Sponsors' Phase 1 Applications	2/14/2003
Phase 2 Applications due to FAA	5/15/2003
FAA Announcement of Third-Round Approvals	7/15/2003

2.8 Project Implementation Information

During the life of the project, the FAA may collect data from the sponsor and conduct (with non-project funds) independent evaluations of the project's impact on safety, efficiency, and mobility objectives. This will allow the FAA to ascertain the success of the pilot program. The selection of projects is currently limited by AIR–21 to the end of the fiscal year 2003.

3. Impact of Revised Guidelines

Potential costs and benefits of the final guidelines have been reviewed consistent with the intent of Executive Order 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act of 1980, Executive Order 13132 (Federalism), Office of the Secretary of Transportation direction on evaluation of international trade impacts, and the Unfunded Mandates Reform Act of 1995. The rationale for compliance with these guidelines was provided in the **Federal Register** notice dated December 6, 2000 which remains unchanged and can be found in that **Federal Register** or is available from the FAA office listed in the **ADDRESSES** section of this announcement.

4. References

The following list outlines references cited above:

OMB Circular A–87, *Cost Principles for State, Local, and Indian Tribal Governments,* revised August 29, 1997.

Report FAA–APO–98–4, *Economic Analysis of Investment and Regulatory Programs—Revised Guide.* Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm.*

Report FAA–APO–98–8, *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs.* Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm.*

FAA Order 6030.1, *FAA Policy on Relocation.* Available upon request from the FAA, telephone 202–646–2310.

FAA Order 7031.2C, *Airway Planning Standard Number One,* through Change.

12. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308.

FAA Order 6700.20, *Non–Federal Navigational Aids and Air Traffic Control Facilities.* Available upon request from the FAA's NAS Operations Program Office, telephone 202–267–3034.

Issued in Washington, DC, on January 9, 2002.

Joann Kansier,

Program Director for Research and Requirements Development, ARQ–1.

[FR Doc. 02–863 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Trinity County, California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA), as lead agency, in cooperation with the Trinity County Department of Transportation (TCDOT) and the California Department of Transportation (CALTRANS), intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA). This is based on a proposal by TCDOT to construct a local connector roadway project providing residents with local connections to existing County roads and minimizing the travel dependency on SR–299 through Weaverville. FHWA intends to process an EIS for this project.

DATES AND ADDRESSES: To ensure that the full range of issues related to the proposed improvements are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. *Written comments* or *questions* concerning the proposed action and the EIS should be directed to FHWA and/or TCDOT at the addresses provided below. Written comments on the scope of alternatives and impacts to be considered should be submitted not later than thirty (30) calendar days from the date of this publication. *Scoping Meeting:* A public scoping meeting was held November 14, 2001 and a subsequent scoping meeting may be offered to *agencies* on request. The public has been notified through local newspapers, postings in public places, and through other public notification methods.

FOR FURTHER INFORMATION CONTACT: R.C. Slovensky, Federal Highway Administration (FHWA), 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724, (916) 498–5774, or fax (916) 498–5008 and/or Jan Smith, TCDOT, PO. Box 2490, Weaverville, CA 96093–2490 (530) 623–1365, or fax (530) 623–5312.

SUPPLEMENTARY INFORMATION: The proposed new roadway, beginning at or near the intersection of Industrial Park Road and State Route (SR)–299, southeast of the community of Weaverville, and intersecting with SR–299 approximately 2 miles northwest of the community of Weaverville, is intended to provide residents with local connections to existing County roads, minimizing the travel dependency on SR–299 and providing an alternative means of travelling in and around Weaverville. Accordingly, the project will reduce traffic congestion and delays along SR–299 through the historic district in downtown Weaverville and at key intersections with SR–3 and Washington Street. The project involves construction of a new two-lane undivided arterial roadway with 12-foot lanes (3.6m) and 4-foot (1.2m) paved shoulders on both sides that will accommodate bicycle traffic. The project will have a 55 mph design speed for Design Hourly (traffic) Volume projected for Year 2030. Up to six existing residential County roads may be connected to the proposed West Connector. A total of three alternative alignments will be examined initially, although other alignments or alignment configurations may be considered. Depending on the ultimate project alignment and configuration, the total project length will vary from 3.1 miles (5.0k) to 4.0 miles (6.4k), including up to 4 stream crossings. Alternative connecting designs for the western project terminus include a grade-separated interchange, and an at-grade ''T'' intersection.

Issues to be addressed in the EIS include socioeconomic issues related to noise and safety, impacts on the rural character of affected neighborhoods, and effects on downtown business. Cultural resources associated with historic mining activities are present in the project area. Elements of a proposed trail system follow the same alignments as the West Connector, and coordination with the Weaverville Basin Trails Committee will be required to resolve any conflicts. The east end of the alignment will traverse a Natural Resources Conservation Service Wetland Reserve Easement through a corridor dedicated for the West Connector. The project will involve construction activities within and adjacent to West Weaver Creek, which is potential habitat for State and Federally listed fish, amphibians, birds, and other wildlife species.

Issued on January 8, 2002.

R.C. Slovensky,

Senior Transportation Engineer, District Operations-North—California Division, Federal Highway Administration.

[FR Doc. 02–850 Filed 1–11–02; 8:45 am]

BILLING CODE 34910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 7, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Departmental Offices/Office of Procurement

OMB Number: 1505–0080.
Form Number: None.
Type of Review: Extension.
Title: Post-Contract Award Information.
Description: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protect the Government's interest.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 5,023.
Estimated Burden Hours Per Respondent: 14 hours, 46 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 70,493 hours.

OMB Number: 1505–0081.
Form Number: None.
Type of Review: Extension.
Title: Solicitation of Proposal Information for Award of Public Contracts.
Description: Information requested of offerors is specific to each procurement solicitation, and is required to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 26,338.
Estimated Burden Hours Per Respondent: 31 hours, 2 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 776,561 hours.

OMB Number: 1505–0107.
Form Number: None.
Type of Review: Extension.
Title: Regulation on Agency Protests.
Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 17.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 34 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–874 Filed 1–11–02; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 4, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Type of Review: Extension.

Title: Schedule of Excess Risks.

Description: Listing of Excess Risks written or assumed by Treasury Certified Companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of Certified companies for the benefit of writing Federal surety bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 296.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 5,920 hours.

OMB Number: 1510–0027.

Form Number: POD 1681.

Type of Review: Extension.

Title: Application for Payment of a Deceased Depositor's Postal Savings Certificate.

Description: This form is used when an application is submitted for payment of a deceased Postal Savings depositor's account. Information furnished on the form is used to determine if the applicant is entitled to the proceeds of the account.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1510–0035.

Form Number: None.

Type of Review: Extension.

Title: Assignment Form.

Description: This form is used when an awardholder wants to assign or transfer all or part of his/her award to another person. When this occurs, the awardholder forfeits all future rights to the portion assigned.

Respondents: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 75 hours.

OMB Number: 1510–0047.

Form Number: TFS 2211.

Type of Review: Extension.

Title: List of Data (A) and List of Data (B).

Description: Information collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or recognition as an Admitted Reinsurer (except or excess risks running to the United States).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 18 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 540 hours.

OMB Number: 1510–0052.

Form Number: FMS 458 and FMS 459.

Type of Review: Extension.

Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary and Resolution.

Description: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury and Loan Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (Once for duration of the authorization).

Estimated Total Reporting Burden: 225 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–875 Filed 1–11–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 31, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 13, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1634.

Regulation Project Number: REG–106902–98 Final.

Type of Review: Extension.

Title: Consolidated Returns—Consolidated Over Foreign Losses and Separate Limitation Losses.

Description: The regulations provide guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1640.

Regulation Project Number: REG–104924–98 NPRM.

Type of Review: Extension.

Title: Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.

Description: The collection of information in this proposed regulation by the Internal Revenue Service to determine whether an exemption from market-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are business or other-for-profit institution.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Recordkeeping Burden: 1,000 hour.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–876 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–10, Procedures for IRAs, SEPs, and SIMPLEs IRA Plans.

DATES: Written comments should be received on or before March 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedures for IRAs, SEPs, and SIMPLEs IRA Plans.

OMB Number: 1545–1769.

Revenue Procedure Number: Revenue Procedure 2002–10.

Abstract: The Economic Growth and Tax Relief Reconciliation Act of 2001 made numerous changes affecting IRAs, SEPs, and simples IRA plans. These changes are effective beginning January 1, 2002, and to take advantage off the new law, these retirement plans must be amended and participants notified of the amendments. Revenue Procedure 2002–10 provides guidance on this process and provides an extended period for making the amendments.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions and farms.

Estimated Number of Respondents: 378,000.

Estimated Average Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 7,371,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–895 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 601.201]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, 26 CFR 601.201, Instructions for Requesting Rulings and Determination Letters.

DATES: Written comments should be received on or before March 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue

Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Instructions for Requesting Rulings and Determination Letters.

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Abstract: The IRS issues rulings letters and determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The procedural regulations set forth the instructions for requesting ruling and determination letters.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: All taxpayers.

Estimated Number of Respondents: 271,914.

Estimated Time Per Respondent: The estimated annual burden per respondent various from 15 minutes to 1 hour, depending on individual circumstances, with an estimated of 55 minutes.

Estimated Total Annual Burden Hours: 248,496.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–897 Filed 1–11–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 9

Monday, January 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44908; File No. SR–CBOE–2001–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Adopt Generic Listing Standards for Trust Issued Receipts, to Provide Alternate Eligibility Requirements for Component Securities of Trust Issued Receipts in Certain Limited Situations and to Increase the Permissible Weight of the Most Heavily Weighted Component Stock of Index Portfolio Shares and Index Portfolio Receipts

Correction

In notice document 01–25700 beginning on page 52161 in the issue of Friday, October 12, 2001, make the following correction:

On page 52161, in the third column, under paragraph *.01 (ii)*, in the third line, ''$50 million'' should read ''$150 million''.

[FR Doc. C1–25700 Filed 1–11–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45220; File No. SR–ISE–2001–33]

Self Regulatory Organizations; International Securities Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Revising the Original Listing Criteria for Underlying Securities in ISE Rule 502

December 31, 2001.

Correction

In notice document 02–286 beginning on page 760 in the issue of Monday, January 7, 2002, make the following correction:

On page 760, in the first column, the heading is corrected as set forth above.

[FR Doc. C2–286 Filed 1–11–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Import Restrictions Imposed on Archaeological and Ethnological Materials from Bolivia

Correction

In correction document C1–30417 beginning on page 953 in the issue of Tuesday, January 8, 2002, make the following correction:

On page 953, in the first column, the heading is set forth as above.

[FR Doc. C1–30417 Filed 1–11–02; 8:45 am]

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Federal Register

Monday,
January 14, 2002

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[WH–FRL–7124–2]

RIN 2040–AD18

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is finalizing the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). The purposes of the LT1ESWTR are to improve control of microbial pathogens, specifically the protozoan *Cryptosporidium,* in drinking water and address risk trade-offs with disinfection byproducts. The rule will require systems to meet strengthened filtration requirements as well as to calculate levels of microbial inactivation to ensure that microbial protection is not jeopardized if systems make changes to comply with disinfection requirements of the Stage 1 Disinfection and Disinfection Byproducts Rule (DBPR). The LT1ESWTR applies to public water systems that use surface water or ground water under the direct influence of surface water and serve fewer than 10,000 persons. The LT1ESWTR builds upon the framework established for systems serving a population of 10,000 or more in the Interim Enhanced Surface Water Treatment Rule (IESWTR). This rule was proposed in combination with the Filter Backwash Recycling Rule (FBRR) in April 2000.

DATES: This regulation is effective February 13, 2002. As discussed in the supplementary information section and consistent with sections 1412(b)(10) and 1445 of SDWA, regulated entities must comply with this rule starting March 15, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. eastern time on January 14, 2002.

ADDRESSES: Public comments, the comment/response document, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket for this rulemaking (W–99–10, Final Long Term 1 Enhanced Surface Water Treatment Rule) are available for review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460 from 9 a.m. to 4 p.m., Eastern Time, Monday through Friday, excluding legal holidays. For access to docket materials or to schedule an appointment please call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact Tom Grubbs at 1200 Pennsylvania Avenue, NW., MC4607, Washington, DC 20460, (202) 564–5262. For general information contact the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the LT1ESWTR are public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI) and serve fewer than 10,000 persons. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	PWSs that use surface water or GWUDI.
State, Local, Tribal or Federal Governments.	PWSs that use surface water or GWUDI.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the LT1ESWTR. This table lists the types of entities that EPA is now aware could potentially be regulated by this rule. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of title 40 of the Code of Federal Regulations and applicability criteria in § 141.501 of today's final rule. If you have questions regarding the applicability of the LT1ESWTR to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

List of Abbreviations Used in This Document:

AWWA American Water Works Association
AWWSCo American Water Works Service Company
°C Degrees Celsius
CCP Composite Correction Program
CCR Consumer Confidence Report
CDC Centers for Disease Control
CFR Code of Federal Regulations
CFSII Continuing Survey of Food Intakes by Individuals
COI Cost of Illness
CPE Comprehensive Performance Evaluation
CTA Comprehensive Technical Assistance
DAF Dissolved Air Flotation
DBP Disinfection Byproducts
DBPR Disinfectants and Disinfection Byproduct Rule
EPA Environmental Protection Agency
ESWTR Enhanced Surface Water Treatment Rule
FACA Federal Advisory Committee Act
FBRR Filter Backwash Recycle Rule
FR Federal Register
gpm Gallons per Minute
GWUDI Ground Water Under Direct Influence of Surface Water
HAA5 Haloacetic Acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HRRCA Health Risk Reduction and Cost Analysis
ICR Information Collection Request
IESWTR Interim Enhanced Surface Water Treatment Rule
LT1ESWTR Long Term 1 Enhanced Surface Water Treatment Rule
MCLG Maximum Contaminant Level Goal
M-DBP Microbial and Disinfectants/Disinfection Byproducts
NDWAC National Drinking Water Advisory Council
NPDWR National Primary Drinking Water Regulation
NODA Notice of Data Availability
NTTAA National Technology Transfer and Advancement Act
NTU Nephelometric Turbidity Units
O&M Operation and Maintenance
OMB Office of Management and Budget
PBMS Performance-based Measurement System
PRA Paperwork Reduction Act
PWS Public Water System
PWSS Public Water Supply Supervision
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SAB Science Advisory Board
SBA Small Business Administration
SBAR Small Business Advocacy Review
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDWA Safe Drinking Water Act
SDWIS Safe Drinking Water Information System
SWTR Surface Water Treatment Rule
TTHM Total Trihalomethanes
UMRA Unfunded Mandates Reform Act
WTP Willingness to Pay

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I. Summary

A. Why Is EPA Promulgating the LT1ESWTR?

The Safe Drinking Water Act (SDWA) requires EPA to set enforceable standards to protect public health from contaminants that may occur in drinking water. As explained in more detail in the April 10, 2000 proposal for today's rule (65 FR 19046), EPA has determined that the presence of microbiological contaminants is a substantial health concern. If finished water supplies contain microbiological contaminants, disease outbreaks may result. Disease symptoms may include diarrhea, cramps, nausea, jaundice, headaches, and fatigue. EPA has set enforceable drinking water treatment techniques to reduce the risk of waterborne disease outbreaks. Treatment technologies such as filtration and disinfection can remove or inactivate microbiological contaminants.

Physical removal is critical to the control of *Cryptosporidium* because it is highly resistant to standard disinfection practices. Cryptosporidiosis, the infection caused by *Cryptosporidium*, may manifest itself as a severe infection that can last several weeks and may cause the death of individuals with compromised immune systems. In 1993, *Cryptosporidium* caused over 400,000 people in Milwaukee, WI to experience intestinal illness. More than 4,000 were hospitalized and at least 50 deaths were attributed to the cryptosporidiosis outbreak. There have also been cryptosporidiosis outbreaks in Nevada, Oregon, and Georgia over the past several years.

In 1990, the EPA Science Advisory Board (SAB) cited drinking water contamination as one of the most important environmental risks and indicated that disease causing microbial contaminants (i.e., bacteria, protozoa, and viruses) are probably the greatest remaining health risk management challenge for drinking water suppliers (USEPA/SAB, 1990). The LT1ESWTR addresses this challenge by improving the control of a wide range of microbial pathogens in public drinking water systems and, specifically addressing *Cryptosporidium* for the first time in systems serving fewer than 10,000 people.

B. What Is Cryptosporidium?

Cryptosporidium is a protozoan parasite found in humans, other mammals, birds, fish, and reptiles. It is common in the environment and widely found in surface water supplies (Rose, 1998; LeChevallier and Norton, 1995; Atherholt *et al.*, 1998; EPA, 2000a). In the infected animal, the parasite multiplies in the gastrointestinal tract. The animal then excretes oocysts of the parasite in its feces. These oocysts are tiny spore-like organisms 4 to 6 microns in diameter (too small to be seen without a microscope), which carry within them the infective sporozoites. The oocysts of *Cryptosporidium* are very resistant to adverse factors in the environment and can survive dormant for months in cool, dark conditions such as moist soil, or for up to a year in clean water. When ingested by another animal they can transmit the cryptosporidiosis disease and start a new cycle of infection. Cryptosporidiosis is primarily a waterborne disease, but has also been transmitted by consumption of contaminated food, unhygienic diaper changing practices (and other person-to-person contact), and contact with young farm animals.

Cryptosporidium oocysts are not easily killed by commonly-used disinfectants. They are relatively unaffected by chlorine and chloramines in the concentrations that are used for drinking water treatment. Oocyst infectivity appears to persist under normal temperatures, although oocysts may lose infectivity if sufficiently cooled or heated (USEPA, 2000a). Research indicates that oocysts may remain viable even after freezing (Fayer and Nerad, 1996).

C. What Are the Health Concerns Associated With Cryptosporidium?

When someone is infected with *Cryptosporidium*, they may contract cryptosporidiosis, a disease which can cause diarrhea, stomach cramps, nausea, loss of appetite, and a mild fever. *Cryptosporidium* has become recognized as one of the most common causes of waterborne disease (drinking and recreational) in humans in the United States. The parasite is found in every region of the United States and throughout the world (*www.cdc.gov/ncidod/dpd/parasites/cryptosporidiosis/factsht_cryptosporidiosis.htm*). The symptoms of cryptosporidiosis begin an average of seven days after infection. Persons with a normal, healthy immune system can expect their illness to last for two weeks or less, with constant or intermittent diarrhea. However, even after symptoms cease, an individual can still pass *Cryptosporidium* in the stool for up to two months, and may be a source of infection for others.

Cryptosporidiosis is not treatable with antibiotics, so prevention of infection is critical. People with weakened immune systems (those with HIV/AIDS, on cancer chemotherapy, or who have received organ transplants) will have cryptosporidiosis for a longer period of time, and it could become life-threatening. Young children, pregnant women, or the elderly infected with cryptosporidiosis can quickly become severely dehydrated.

Twelve waterborne cryptosporidiosis outbreaks have occurred at drinking water systems since 1984 (Craun, 1998; USEPA, 2000a). The largest of the known outbreaks occurred in Milwaukee and was responsible for over 400,000 illnesses and at least 50 deaths (Hoxie, *et al.*, 1997; MacKenzie *et al.*, 1994); other known outbreaks have occurred in smaller communities and have involved many fewer people. An incident such as a rainstorm that flushes many oocysts into the source water or causes a sanitary sewer overflow combined with a water treatment plant upset could allow a large pulse of oocysts to move past the multiple barriers of a water treatment plant.

D. Does This Regulation Apply to My Water System?

Today's final regulation applies to all small (serving less than 10,000 people) public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI).

E. How Is the EPA Regulating Cryptosporidium in the LT1ESWTR?

In the IESWTR (63 FR 69478), EPA established a maximum contaminant level goal (MCLG) of zero for *Cryptosporidium.* When establishing an MCLG, EPA must also establish either a corresponding Maximum Contaminant Level (MCL) or a treatment technique. In the IESWTR and in today's LT1ESWTR, the Agency chose to establish a treatment technique that relies on strengthening water treatment processes already in place. For filtered systems this means achieving at least 2-log (99 percent) removal of *Cryptosporidium* by meeting strengthened combined filter effluent turbidity limits as established by today's rule. For unfiltered systems it means maintaining and improving *Cryptosporidium* control under existing watershed control plans.

F. What Other Requirements Are Included in This Rule?

Today's final regulation includes several requirements.

—All surface water and GWUDI systems serving fewer than 10,000 people must meet the requirements for achieving a 2-log removal or control of *Cryptosporidium*;

—Conventional and direct filtration systems must comply with specific combined filter effluent turbidity requirements while alternative filtration systems (systems using filtration other than conventional filtration, direct filtration, slow sand filtration, or diatomaceous earth filtration), must demonstrate the ability to achieve 2-log removal of *Cryptosporidium* and comply with specific State-established combined filter effluent turbidity requirements;

—Conventional and direct filtration systems must continuously monitor the turbidity of individual filters and perform follow-up activities if this monitoring indicates a potential problem;

—Systems must develop a disinfection profile unless they can demonstrate that their TTHM and HAA5 disinfection byproduct (DBP) levels are less than 0.064 mg/L and 0.048 mg/L respectively;

—Systems considering a significant change to their disinfection practice must develop a disinfection inactivation benchmark of their existing level of microbial protection and consult with the State for approval prior to implementing the disinfection change;

—Finished water reservoirs for which construction begins after the effective date of today's rule must be covered; and

—Unfiltered systems must comply with updated watershed control requirements that add *Cryptosporidium* as a pathogen of concern.

G. How Will This Regulation Protect Public Health?

Today's rule for the first time establishes *Cryptosporidium* control requirements for small systems by requiring a minimum 2-log removal for *Cryptosporidium.* The rule also strengthens filter performance requirements to ensure 2-log *Cryptosporidium* removal, establishes individual filter monitoring to minimize contaminant pass-through and support improved performance, includes *Cryptosporidium* in the definition of GWUDI, and explicitly considers unfiltered system watershed control provisions. Today's rule also reflects a commitment to the importance of maintaining existing levels of microbial protection in public water systems as plants take steps to comply with newly applicable DBP standards. Systems considering significant changes to their disinfection practices must first evaluate current levels of *Giardia* inactivation (and virus inactivation if applicable) and consult with their State Primacy Agency for approval before implementing those changes to assure that current microbial protection is not significantly reduced. Thus, compliance with the provisions of today's rule will improve public health protection by reducing the risk of exposure to *Cryptosporidium* in small systems serving fewer than 10,000 people even as those systems begin to take steps to comply with related DBP standards.

II. Background

A. What Is the Statutory Authority for the LT1ESWTR?

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986, requires EPA to publish a maximum contaminant level goal (MCLG) for each contaminant which in the judgement of the EPA Administrator, may have an adverse effect on the health of persons, occurs in public water systems with a frequency and at a level of public health concern, and whose regulation would represent a meaningful public health risk reduction (Section 1412(b)(1)(A)). MCLGs are non-enforceable health goals to be set at a level at which no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety (Section 1412(b)(4)). The Act was again

amended in August 1996 (Public Law 104–83), resulting in the renumbering and augmentation of certain sections with additional statutory language. New sections were added establishing new drinking water requirements.

The 1986 Amendments to SDWA requires EPA to publish an enforceable National Primary Drinking Water Regulation (NPDWR) that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1) and 1412(7)(a)) at the same time it publishes an MCLG. EPA is authorized to promulgate a NPDWR that requires the use of a treatment technique in lieu of establishing an MCL, if the Agency finds that it is not economically or technologically feasible to ascertain the level of the contaminant. Today's rule relies upon the treatment technique of improved filter performance based on strengthened turbidity limits to control for Cryptosporidium because an analytical method suitable for finished water compliance purposes is currently not economically or technologically feasible. In accordance with a schedule established by Section 1412(b)(2)(C) of SDWA as added by the 1996 Amendments to SDWA, EPA is required to promulgate today's rule by November 2000.

B. What Is the Regulatory History for the LT1ESWTR?

In 1989, EPA promulgated the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989 (USEPA, 1989)) that set MCLGs of zero for *Giardia lamblia*, viruses, and *Legionella* and promulgated regulatory requirements for all PWSs using surface water or GWUDI. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses, and *Legionella*, as well as many other pathogenic organisms. Briefly, those requirements include (1) requirements for maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3-log (99.9 percent) for *Giardia* and 4-log (99.99 percent) for viruses; (3) combined filter effluent turbidity performance standard of 5 nephelometric turbidity units (NTU) as a maximum and 0.5 NTU at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems. Systems seeking to avoid filtration were required to meet avoidance criteria and obtain avoidance determinations from States by December 30, 1991, otherwise filtration must have been provided by June 29,1993. For systems properly avoiding filtration, later failures to meet avoidance criteria triggered a requirement that filtration be provided within 18 months.

The intention of the SWTR was to provide appropriate multiple barriers of treatment to control pathogen occurrence in finished drinking water. *Cryptosporidium,* however, was not addressed under the SWTR, because EPA lacked sufficient health, occurrence, and water treatment control data regarding this organism at the time of the rule's development. The IESWTR and today's final rule address these gaps in microbial protection.

In 1992, EPA initiated a negotiated rulemaking (Reg-Neg) to develop a disinfectants and disinfection byproducts rule. The Reg-Neg Committee consisting of a variety of stakeholder groups met from November 1992 through June 1993. As part of this effort, the Committee concluded that the SWTR needed to be revised to address the health risk of high densities of pathogens in poorer quality source waters than the SWTR addressed as well as the health risks of *Cryptosporidium*. The Committee recommended the development of three sets of rules: a two-staged Disinfectants/Disinfection Byproducts Rule (DBPR), an ''interim'' Enhanced Surface Water Treatment Rule (IESWTR), a ''long term'' Enhanced Surface Water Treatment Rule (LT1ESWTR), and an Information Collection Rule. The IESWTR was only to apply to those systems serving 10,000 or more persons. The Committee agreed that the ''long term'' Enhanced Surface Water Treatment Rule would be needed for systems serving fewer than 10,000 persons.

Congress legislatively affirmed this Microbial/Disinfection Byproduct (M-DBP) strategy as part of the 1996 SDWA Amendments. As part of those new Amendments, Congress also established a new schedule for EPA promulgation of these rules (which is the basis for the November 2000 schedule for today's rule). EPA established the M-DBP Advisory Committee under the Federal Advisory Committee Act (FACA) in 1997 to seek advice on how to proceed towards these deadlines in light of new information available since the 1993 negotiated rulemaking discussions. The Committee met five times in March through July 1997 to discuss issues related to the IESWTR and the Stage 1 DBPR. The Committee reached agreement in July of 1997 and its recommendations are embodied in an Agreement in Principle document dated July 15, 1997, which is also found in two Notices of Data Availability (NODA) (USEPA1997a,b). The major issues addressed in the Agreement in Principle were discussed in the NODA for the IESWTR (62 FR 59486, November 3, 1997) and Stage 1 DBPR (62 FR 59388, November 3, 1997).

On December 16, 1998, EPA promulgated the IESWTR (63 FR 69478), which applies to surface water and GWUDI systems serving 10,000 or more persons. The purposes of the IESWTR are to improve control of microbial pathogens (specifically Cryptosporidium) and to address risk trade-offs with DBPs. Key provisions established in the IESWTR include: (1) An MCLG of zero for *Cryptosporidium;* (2) a 2-log *Cryptosporidium* removal requirements for systems that filter; (3) strengthened combined filter effluent turbidity performance standards and individual filter turbidity provisions; (4) disinfection benchmarking provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new DBP standards; (5) inclusion of *Cryptosporidium* in the definition of GWUDI, as another pathogen that would indicate the presence of GWUDI, and in the watershed control requirements for unfiltered public water systems; (6) requirements for covers on new finished water reservoirs; and (7) sanitary surveys for all surface water and GWUDI systems regardless of size.

Today's rule is based in large part upon the data, research, and technical analysis that supported the major components included in the 1998 IESWTR. To that degree, it reflects the national interim microbial protection control strategy ratified by a wide range of experts and stakeholders as part of the 1997 M/DBP Agreement in Principle. However, as was discussed in the April 10, 2000 proposal, today's rule also is based on new small system information that became available since 1998 and, equally important, it also reflects a major commitment to significantly reduce small system compliance burdens wherever possible, while maintaining public health protection.

C. How Were Stakeholders Involved in the Development of the LT1ESWTR?

EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998 with two public meetings: one in Denver, Colorado and the other in Dallas, Texas (USEPA, 1999a,b). Building on these two public meetings, EPA has also held a number of additional meetings with stakeholders,

trade associations, environmental groups, and representatives of State and local elected officials. Of particular importance for this rule, given its focus on small systems, EPA received valuable input from small entity representatives as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel. The panel was initiated in April of 1998 and officially convened in August of 1998. Many of the panel's recommendations are reflected in today's rule.

EPA provided numerous opportunities for stakeholder and public involvement. In early June 1999, EPA mailed an informal draft of the LT1ESWTR preamble to the approximately 100 stakeholders who attended either of the public stakeholder meetings. Members of trade associations and the SBREFA panel also received the draft preamble. EPA received valuable suggestions and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. EPA proposed the LT1ESWTR on April 10, 2000. During the comment period, the Agency held a public meeting in Washington D.C. on April 14, 2000. Additionally, the proposed rule was presented to industry, State representatives, and the public in nearly 50 meetings across the US, including a May 30, 2000 meeting in Washington, D.C. with ten representatives of elected State and local officials (USEPA 2000g,h). Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders.

D. What Did the April 10, 2000 Proposal Contain?

The proposed rulemaking package, which is the basis for today's final rule, was entitled The Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Proposed Rule (USEPA, 2000b).

The proposed rule included two distinct sets of provisions: LT1ESWTR provisions and Filter Backwash Recycling Rule (FBRR) provisions. The Agency promulgated the final FBRR in a **Federal Register** announcement on June 8, 2001 (66 FR 31086), separate from today's final rule. The LT1ESWTR proposed rule provisions applied to surface and GWUDI systems serving fewer than 10,000 persons and included the following provisions:

—2-log removal of *Cryptosporidium*;
—Compliance with specific combined filter effluent turbidity requirements;
—Continuous turbidity monitoring for individual filters with follow-up activities if monitoring results indicated a potential problem;
—Development of a disinfection profile unless optional monitoring at a particular plant demonstrated TTHM and HAA5 levels less than 0.064 mg/L and 0.048 mg/L respectively;
—Development of a *Giardia* inactivation disinfection benchmark and consultation with the State for approval before making a significant change in disinfection practices;
—Mandatory covers for all newly constructed finished water reservoirs; and
—Unfiltered system compliance with updated watershed control requirements that add *Cryptosporidium* as a pathogen of concern.

III. Discussion of the Final Rule

A. What Level of Cryptosporidium Removal Does the LT1ESWTR Require?

1. What Does Today's Rule Require?

Today's final rule establishes a treatment technique requirement for 2-log removal of *Cryptosporidium* for surface water and GWUDI systems serving fewer than 10,000 persons. This requirement applies between a point where the raw water is not subject to contamination by surface water runoff and a point downstream before or at the first customer.

2. How Was This Requirement Developed?

As discussed previously in today's rule, *Cryptosporidium* is a microbiological contaminant that has caused several outbreaks of cryptosporidiosis and poses serious health risks. For these reasons, the Agency set forth to develop requirements to minimize risks associated with *Cryptosporidium* in drinking water. In the IESWTR, EPA established a MCLG of zero for *Cryptosporidium*. EPA decided to establish 2-log removal of *Cryptosporidium* as the accompanying treatment technique for this MCLG. This requirement is based on a number of treatment effectiveness studies that demonstrate the ability of well-operated conventional and direct filtration plants to achieve at least a 2-log removal of *Cryptosporidium* (Patania *et al.,* 1995; Nieminski and Ongerth, 1995; Ongerth and Pecoraro, 1995; LeChevallier and Norton, 1992; LeChevallier *et al.,* 1991; Foundation for Water Research, 1994; Kelly *et al.,* 1995; and West *et al.,* 1994). The information and data in these eight studies provide convincing evidence that conventional and direct filtration plants that employ coagulation, flocculation, sedimentation (in conventional filtration only), and filtration steps, have the ability to achieve a minimum of 2-log removal of *Cryptosporidium* when meeting specific turbidity limits. EPA has also provided data in the proposal for today's final rule that indicate the ability of slow sand filtration, diatomaceous earth filtration, and alternative filtration (membrane filtration, cartridge filtration, etc.) to achieve at least 2-log removal of *Cryptosporidium* (Jacangelo *et al.,* 1995; Drozd & Schartzbrod, 1997; Hirata & Hashimoto, 1998; Goodrich *et al.,* 1995; Collins *et al.,* 1996; Lykins *et al.,* 1994; Adham *et al.,* 1998; Shuler & Ghosh, 1991; Timms *et al.,* 1995; Shuler *et al.,* 1990; and Ongerth & Hutton, 1997). The Agency believes that the technological feasibility for 2-log removal is demonstrated for both large and small systems and therefore today's rule extends the 2-log *Cryptosporidium* removal requirement established for large and medium systems in the 1998 IESTWR to small systems serving fewer than 10,000 persons.

3. What Major Comments Were Received?

The majority of the commenters on the proposed rule agreed with the appropriateness of establishing a 2-log removal requirement for *Cryptosporidium*. A few commenters noted that small systems should not be required to meet the same *Cryptosporidium* log removal requirements as large systems. EPA disagrees. The technological feasibility of 2-log removal is well demonstrated (as shown in the studies discussed in the proposal for today's final rule) and the Agency believes that persons served by all sized systems should be afforded comparable levels of public health protection (i.e., the small systems subject to the LT1ESWTR should have the same MCLG, and the 2-log *Cryptosporidium* removal treatment technique as large systems subject to the IESWTR).

B. What Combined Filter Effluent Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule requires strengthened combined filter effluent performance for conventional filtration, direct filtration, and alternative filtration systems (systems using filtration technologies other than conventional filtration, direct filtration, diatomaceous earth filtration, or slow sand filtration) as the treatment technique for achieving a 2-log removal of *Cryptosporidium*. For conventional and direct filtration systems, the

turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU. Under today's rule, conventional and direct filtration plants meeting these filter performance requirements are presumed to achieve at least a 2-log removal of *Cryptosporidium*. Slow sand and diatomaceous earth filtration plants are presumed to achieve at least 2-log removal of *Cryptosporidium* if they continue to meet the existing filter performance requirements established in the SWTR. Systems using alternative filtration (i.e., membrane filtration, cartridge filtration, etc.) must demonstrate to the State that their system achieves 2-log removal of *Cryptosporidium*. The State will then establish appropriate turbidity limits to reflect this performance. At the end of each month, systems must report the total number of combined filter effluent turbidity measurements taken each month, as well as the number and percentage of turbidity measurements that exceeded their 95th percentile turbidity limit and the number of measurements that exceeded their maximum turbidity limit. Combined filter effluent turbidity measurements must be kept for at least three years.

2. How Was This Requirement Developed?

In establishing the 2-log removal as a treatment technique for *Cryptosporidium*, the Agency relied on the aforementioned studies to demonstrate the technological feasibility of establishing the 2-log removal. These studies demonstrated that specific treatment would achieve 2-log removal of *Cryptosporidium* when operated to achieve specific turbidity performance limits. For conventional and direct filtration systems, studies demonstrated that achieving a turbidity of 0.3 NTU 95 percent of the time and never exceeding 1 NTU would ensure at least 2-log removal of *Cryptosporidium*. For slow sand and diatomaceous earth filtration systems, the studies demonstrated that meeting existing SWTR turbidity limits would ensure at least 2-log removal of *Cryptosporidium*. Alternative filtration systems were shown to achieve at least 2-log removal of *Cryptosporidium* at a variety of turbidities based on the type of filtration and other site-specific characteristics. The requirements of today's final rule reflect the recommendations of the 1997 M-DBP Committee.

As part of the LT1ESWTR development process, EPA analyzed performance data from 211 small systems in 15 different States. That data indicated that a substantial number of small systems are presently meeting the tighter performance standards of today's rule. For example, 50 percent of the 211 systems are currently meeting 0.3 NTU 12 months out of the year. In addition, 93 percent of the 211 systems never exceeded the 1 NTU maximum 12 months out of the year. Therefore, EPA believes that the strengthened filter performance standards established for small systems in today's final rule are feasible and achievable.

3. What Major Comments Were Received?

The majority of the commenters on the proposal agreed with the appropriateness of the combined filter effluent requirements. Many commenters raised concerns with the proposal's reliance on turbidity as an indicator for demonstrating that membrane filtration meets the same *Cryptosporidium* removal requirements as conventional and direct filtration systems. Commenters indicated that although turbidity is the most prevalent form of water quality monitoring, establishing a 0.3 NTU 95th percentile limit and 1 NTU maximum limit would not be as appropriate an indicator of the performance of membranes than other parameters such as flux or membrane integrity. They noted that using turbidity was appropriate if site specific turbidity limits were utilized. At most facilities these limits would typically be much lower than 0.3 NTU. Additionally, commenters asserted that since the typical operational turbidities of membranes (< 0.05 NTU) were so much lower than those of conventional filtration, it would be inappropriate to require membranes to meet turbidity limits that were significantly higher than standard operating practices. In response, EPA notes that in the proposed rule, EPA allowed membrane systems to meet either conventional filtration or alternative filtration combined filter effluent requirements. After further evaluating existing studies and information provided by commenters, EPA agrees that other appropriate indicators may be used to determine the treatment efficiency of membrane filtration, and that given the different operational turbidities of conventional filtration and membrane filtration, different turbidity limits are appropriate. Therefore, today's final rule treats membrane filtration as an available alternative filtration technology, instead of requiring membranes to meet the same turbidity limits as conventional and direct filtration.

C. What Individual Filter Monitoring Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule establishes a requirement that all systems using surface water or GWUDI, serving fewer than 10,000 persons, and utilizing conventional or direct filtration must continuously monitor the individual filter turbidity for each filter used at the system. For purposes of this rule, continuous monitoring means at least every 15 minutes. Systems must keep the results of this monitoring for at least three years. Each month systems must report to the State that they have conducted individual filter turbidity monitoring, and are required to indicate the dates, filter number, and turbidities of any measurements that exceeded 1.0 NTU. Today's rule provides that systems with two or fewer filters may monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity monitoring. Based on this monitoring, if a system exceeds 1.0 NTU in two consecutive measurements the system must include the filter number, date, time and reason for the exceedance at the end of the month in its monthly filter performance report to the State. If this occurs three months in a row for the same filter, a system is required to conduct a self-assessment of the filter. If a self-assessment is required, it must take place within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month. The system must report to the State that the self-assessment was completed. A self-assessment must include at least the following components:

—Assessment of filter performance;
—Development of a filter profile;
—Identification and prioritization of factors limiting filter performance;
—Assessment of the applicability of corrections; and
—Preparation of a self-assessment report.

If a system exceeds 2.0 NTU (in two consecutive measurements 15 minutes apart) for two months in a row, the system must contact the State to arrange for the State or an approved third party to conduct a Comprehensive Performance Evaluation (CPE) not later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. The CPE must be completed and

submitted to the State no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

2. How Was This Requirement Developed?

Performance of individual filters within a plant is of paramount importance in preventing pathogen breakthrough. Two important concepts regarding individual filters underlie today's individual filter monitoring requirement. First, as discussed in more detail in the April 10, 2000 proposal, poor performance (and potential pathogen breakthrough) of one filter can be masked by optimal performance of the remaining filters, without exceeding combined filter effluent turbidity performance standards. Second, recent filter performance research demonstrates that individual filters are susceptible to turbidity spikes of short duration that may not be captured by four-hour combined filter effluent measurements. Several studies (Amirthatajah, 1988; Bucklin *et al.,* 1988; Cleasby 1990; Hall and Croll 1996; and McTigue *et al.,* 1998) have confirmed the frequency and magnitude of individual filter turbidity spikes. To address these spikes and the potential for masking, and provide system operators with information and advanced warning with regards to individual filter performance problems before they lead to treatment technique violations, the Agency proposed individual filter turbidity monitoring. EPA proposed one option and requested comment on two alternative approaches. The alternatives consisted of an approach identical to the IESWTR that entailed significantly more burden, and an approach that included 95th percentile and maximum triggers instead of a trigger based on two consecutive measurements. The proposed option has been revised in three minor ways. In today's rule:

—Systems with two or fewer filters may monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity (the proposal required all filters be monitored);

—Systems must schedule CPEs within 60 days and complete them within 120 days (the proposal required 30 and 90 days);

—A system has 14 days following a turbidimeter malfunction to resume continuous individual filter monitoring before a violation occurs (the proposal required 5 days).

3. What Major Comments Were Received?

The majority of the commenters on the proposal agreed with the appropriateness of the individual filter monitoring requirements. The Agency requested comment on a variety of issues to which commenters responded. Most commenters supported the modification that States be provided the opportunity to allow systems with two or fewer filters to monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity indicating that poor performance of one filter could not simply be masked by optimal performance of an additional filter. The Agency has included this modification in today's final rule because it reduces the burden on small systems while still providing continuous monitoring that can be used to indicate whether filters are performing poorly.

Several commenters supported a modification to lengthen CPE schedules by 30 days. The Agency has included this modification in today's final rule in order to provide States added flexibility in performing these activities. The extra 30 days will provide States the opportunity to marshal unique resources (specifically, employees trained in conducting CPEs) and prioritize the conduct of CPEs, when several systems trigger them during the same time period.

Several commenters indicated that allowing only five working days for an on-line turbidimeter to be off-line before a violation resulted would be inappropriate for small systems. Commenters indicated that smaller systems often do not have back-up units onsite and would be required to contact manufacturers and await shipping and installation which could easily exceed the five days. EPA agrees and has modified the requirement to allow systems serving fewer than 10,000 persons, 14 days to resume online monitoring prior to incurring a violation.

Several commenters noted that systems serving fewer than 10,000 persons should be subject to less frequent monitoring of individual filter effluent. EPA believes that continuous individual filter monitoring is feasible and assures improved performance of filtration systems. As explained in the proposal, continuous filter monitoring is necessary to identify short duration turbidity spikes which are likely to be missed with less frequent monitoring. This is true for systems of all sizes. Less frequent monitoring would not identify many turbidity spikes and accordingly would not provide a comparable level of public health protection as that of continuous monitoring required for large systems under the IESWTR. In fact, the actual frequency of individual filter monitoring has little effect on burden as much of the costs associated with monitoring are derived from the purchase of the necessary equipment and would be incurred regardless of the frequency. Reduced monitoring would represent reduced public health protection and the Agency firmly believes that the consumers of these small systems should be afforded a comparable level of public health protection as larger systems.

D. What Disinfection Profiling and Benchmarking Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule requires community and non-transient non-community systems that use surface water or GWUDI and serve fewer than 10,000 persons to develop a disinfection profile based on a 52 week period. Systems serving between 500 and 9,999 must begin profiling and notify the State to this effect by July 1, 2003. Systems serving fewer than 500 must begin profiling and notify the State to this effect by January 1, 2004. To conduct the profile, systems must:

—Monitor disinfectant residual concentration, water temperature in degrees Celsius, pH, and contact time during peak hourly flow once a week (on the same calendar day) during all months that the system is operational;

—Calculate Giardia lamblia inactivation for each of the 52 weeks; and

—Plot graphically, the 52 weekly inactivations.

Results of the profile must be kept indefinitely. EPA is developing guidance materials that provide detailed information on this procedure. A State may determine that a system's profile is unnecessary where a system submits TTHM and HAA5 data that:

—Is taken during the month of warmest water temperature (beginning no earlier than 1998);

—Is taken at the point of maximum residence time; and

—Reports levels of TTHM and HAA5 of less than 0.064 mg/L and 0.048 mg/L respectively.

Today's final rule also requires any system which developed a profile and which decides to make a significant change to their disinfection practice to determine their disinfection benchmark (the average microbial inactivation during the month with the lowest

inactivation), consult with the State for approval, and provide the following information during consultation:

—Description of the proposed change;
—Disinfection profile (and data used to develop profile); and
—Analysis of how the proposed change will affect the current levels of disinfection.

Results of the disinfection benchmark (including the raw data and analysis) must be kept indefinitely.

2. How Was This Requirement Developed?

The disinfection benchmarking requirements provide the necessary link between simultaneous compliance with microbial protection requirements of the IESWTR and LT1ESWTR and disinfection byproduct requirements of the DBPR. The requirements were established pursuant to the authority of Section 1445 of SDWA to ensure that systems would not jeopardize microbial protection when making changes in disinfection practices to comply with the DBPR.

During the 1997 M/DBP FACA deliberations, all participants agreed to the fundamental premise that new standards for control of DBPs must not lead to significant reductions in existing levels of microbial protection. This premise is reflected in the 1997 M–DBP Advisory Committee Agreement in Principle document. The Advisory Committee reached agreement on the use of a microbial profiling and benchmarking process, whereby a system and State, working together, could assure that there would not be a significant increase in microbial risk as a result of modifying disinfection practices to meet MCLs for TTHM and HAA5. The final IESWTR established the disinfection benchmark procedure to require large systems (serving 10,000 or more persons) that might be considering a significant change to their disinfection practice (defined as systems with TTHM or HAA5 concentrations at or above 80 percent of the respective MCLs (e.g., 0.064 mg/L TTHM or 0.048 mg/L HAA5)) to evaluate the impact on microbial risk. Under the IESWTR, large systems whose TTHM and/or HAA5 average levels exceeded the aforementioned values were required to develop a disinfection profile of microbial inactivation over the course of a year by calculating the daily level of *Giardia* inactivation. Those large systems required to develop a disinfection profile that also plan to make a significant change to disinfection practices were required to develop a ''benchmark'' of existing levels of *Giardia* microbial protection and to consult with the State prior to implementing the change.

In developing the disinfection benchmarking requirements of the LT1ESWTR, EPA used the IESWTR requirements as a starting point and, using significant input from stakeholders, modified the requirements to significantly reduce burden yet maintain a comparable level of public health protection. The April 10, 2000 proposal included several alternatives for establishing the microbial profiling and benchmarking process.

Of the four TTHM and HAA5 monitoring alternatives, the first was identical to the IESWTR, and included four quarters of monitoring at four points in the distribution system. The second alternative matched DBP compliance monitoring, requiring systems serving fewer than 500 to monitor once per year, and systems serving 500 or greater to monitor quarterly. A third alternative required only one sample taken at the point of maximum residence time for all systems. The fourth alternative (which was proposed) made TTHM and HAA5 monitoring optional. This alternative was chosen over the others, because it significantly reduces burden and the concern about ''early implementation,'' that is, the need for systems to comply with requirements of a rule before primacy states have adopted new conforming regulations, while still retaining the ability for systems and States to utilize monitoring data to demonstrate low TTHM and HAA5 levels, and therefore avoid profiling. Since this monitoring is no longer required to determine the applicability of systems to conduct profiles, the final LT1ESWTR refers to this monitoring as ''optional monitoring.'' The associated TTHM and HAA5 samples that must be conducted under this optional monitoring, are described in section 141.531. Of the four profiling alternatives, the first was identical to the IESWTR, requiring daily profiling for a year. The second alternative did not require profiling. The third alternative, which was proposed, required weekly profiling for a year. The fourth alternative required daily profiling during a single month. The Agency proposed weekly profiling over the course of a full year because it significantly reduces burden associated with conducting profiling (as compared to the first alternative), but still provides information on the seasonal variation associated with microbial inactivation, and develops an accurate microbial benchmark as systems moved to comply with the Stage 1 DBPR. The second and fourth profiling alternatives would not provide such information. The Agency has revised the proposed option in one minor way. In today's rule:

—Systems serving between 500 and 9,999 persons must begin weekly profiling no later than July 1, 2003, and systems serving fewer than 500 persons must begin weekly profiling no later than January 1, 2004 (the proposal required all systems to begin profiling no later than January 7, 2003).

3. What Major Comments Were Received?

The Agency received significant comment on the disinfection benchmarking provisions of the proposed rule. Commenters both supported and opposed the proposed ''optional'' TTHM and HAA5 monitoring. Several commenters argued that EPA should not require systems or states to undertake activities, even optional monitoring, before three years from the date a rule is promulgated because it would result in early implementation of the rule. While the Agency agrees that to the extent possible, implementation should be minimized in the first three years after the promulgation of a national primary drinking water regulation, as required by Section 1412(b)(10) of SDWA, the Agency continues to believe that allowing systems to conduct optional monitoring prior to three years after promulgation is appropriate and authorized under section 1445 of SDWA.

Several commenters raised ''early implementation'' concerns with profiling as well, and suggested profiling should take place only after using the first round of DBP monitoring in 2004 as optional monitoring for profiling activities. The Agency does agree, that to the extent possible, early implementation should be minimized in the first two years after the promulgation of the rule. However, the Agency believes that developing a microbial profile and benchmark prior to compliance monitoring under the Stage 1 DBPR is key to ensuring that systems do not jeopardize existing microbial protection when making changes to their disinfection practices to comply with the Stage 1 DBPR. Consequently, today's final rule requires systems serving fewer than 500 persons to begin profiling in January 2004, while systems serving greater than 500 to 9,999 persons are required to begin profiling in July 2003.

Other commenters believed that the proposed requirement represented burden reduction for small systems and

States while still achieving the goals of optional monitoring and profiling as developed by the 1997 FACA and EPA. Additionally, commenters noted that EPA should provide States and systems the ability to use more representative data if available (i.e., allowing systems to average over several quarters of data similar to the IESWTR requirements). EPA agrees that systems and States should be allowed the opportunity to use more representative samples, and today's final rule affords States the opportunity to allow more representative data for optional monitoring and profiling.

E. How Does the Definition of Ground Water Under the Direct Influence of Surface Water Change?

1. What Does Today's Rule Require?

Today's final rule modifies the definition of ground water under the direct influence of surface water (GWUDI) to include *Cryptosporidium*, as another pathogen that would indicate the presence of GWUDI, for all PWSs.

2. How Was This Requirement Developed?

Although ground water is typically protected from microbial contaminants that are characteristic of surface water supplies, some ground water systems are susceptible to microbial contamination from surface water. Ground water that exhibits physical water quality indicators that closely correlate with nearby surface water and which contain surface water indicator organisms is ''under the influence,'' of that surface water. In order to protect customers of such systems from illnesses resulting from exposure to Giardia and other microbial pathogens, the Agency addressed this issue during development of the 1989 SWTR. The final SWTR requires that systems with source water found to be GWUDI are subject to the filtration and disinfection requirements of Section 141 subpart H.

During development of today's final rule, the Agency proposed to modify the definition of GWUDI to include *Cryptosporidium*, as another pathogen that would indicate the presence of GWUDI. This is consistent with the approach taken by the Agency in the IESWTR and is further supported by recently available data indicating *Cryptosporidium* occurrence in 21 public water system wells (Hancock et al., 1998). As a result, EPA believes it appropriate and necessary to include *Cryptosporidium* in the definition of GWUDI for systems serving fewer than 10,000 persons in today's rule.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of modifying the definition of GWUDI to include *Cryptosporidium* for all PWSs. Today's final rule reflects the GWUDI definition as proposed.

F. What Additional Requirements Does the LT1ESWTR Contain for Unfiltered Systems?

1. What Does Today's Rule Require?

Today's rule modifies the requirements for surface water or GWUDI systems serving fewer than 10,000 persons that do not provide filtration by including *Cryptosporidium* in the watershed control provisions everywhere *Giardia lamblia* is mentioned.

2. How Was This Requirement Developed?

Watershed control requirements were initially established in 1989 as part of the SWTR. The SWTR contains specific conditions that a system must meet in order to avoid filtration. These conditions include good source water quality disinfection requirements, periodic on-site inspections, the absence of waterborne disease outbreaks, compliance with the Total Coliform Rule, and a watershed control program. The SWTR requires that the watershed control program must be maintained specifically to minimize the potential for contamination by *Giardia lamblia* cysts and viruses in the source water.

During development of today's rule, the Agency proposed that *Cryptosporidium* should also be included as a focus in watershed program for unfiltered systems. For the same public health reasons explained in detail as part of the April 10, 2000 proposal and outlined earlier regarding the risks associated with exposure to *Cryptosporidium,* the Agency believes it is important that watershed control requirements for unfiltered systems be revised to include *Cryptosporidium.* This is particularly important since such systems do not have the additional treatment barrier provided by filtration to protect against possible pass-through of *Cryptosporidium* into the distribution system.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of including *Cryptosporidium* in the watershed control program requirements for unfiltered systems. No substantive changes were made to this provision between proposal and today's final rule.

G. What Does the LT1ESWTR Require for Finished Water Reservoirs

1. What Does Today's Rule Require?

Today's final rule requires that all finished water reservoirs, holding tanks, or storage water facilities for finished water at systems serving fewer than 10,000 persons, for which construction begins after March 15, 2002 must be covered.

2. How Was This Requirement Developed?

Open finished water reservoirs, holding tanks, and storage tanks are utilized by PWSs throughout the country. Because these reservoirs are open to the environment and outside influences, they can be subject to the reintroduction of contaminants that the treatment plant was designed to remove. Existing EPA guidelines recommend that all finished water reservoirs and storage tanks be covered (USEPA, 1991). Additionally, many States currently require that finished water storage be covered, and the American Water Works Association (AWWA) has issued a policy statement strongly supporting the covering of reservoirs that store potable water (AWWA, 1983). In the July 29, 1994 IESWTR proposal (59 FR 38832), the Agency requested comment on whether to issue regulations requiring systems to cover finished water storage. Most commenters supported either Federal or State requirements, with some suggesting requirements should only apply to newly constructed reservoirs. In the final IESWTR, the Agency required systems using surface water and GWUDI and serving 10,000 persons or more to cover any newly constructed finished water reservoirs, holding tanks, or storage tanks. Through discussions with stakeholders and evaluations of available information, the Agency is unaware of any newly constructed uncovered finished water reservoirs at small systems since discussions with stakeholders regarding the LT1ESWTR began in 1998. The Agency is furthermore unaware of any future plans of small systems to construct uncovered finished water reservoirs. In fact the drinking water industry (regulators, consultants, and industry groups) have discouraged the construction of new uncovered reservoirs for many years. Furthermore, creating a prohibition on newly constructed uncovered finished water reservoirs would not affect current unfinished water reservoirs or even any system, which, despite the industry

standard of constructing only covered finished water reservoirs, may have already commenced construction on an uncovered finished water reservoir unbeknownst to the Agency or stakeholders which provided input on the rule. Therefore, in accordance with Section 1412(b)(10) of SDWA, the Agency has determined it is practicable to require as part of today's rule that systems serving fewer than 10,000 people provide covers for all finished water reservoirs, holding tanks, or storage reservoirs constructed after March 15, 2002.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of requiring that newly constructed finished water storage be covered. Several States noted that they currently require that all finished water reservoirs be covered. No substantive changes were made to this provision between proposal and today's final rule.

H. What Is the Compliance Schedule for the LT1ESWTR?

1. When Must My System Comply With Each of the Requirements of the Rule?

Each of the components of the final LT1ESWTR has a specific compliance date. The following table lists each requirement, along with the appropriate **Federal Register** citation and the compliance date:

Rule requirements	FR citation	Compliance date
Cover new finished water reservoirs	§ 141.511	March 15, 2002.
Comply with updated watershed control requirements (unfiltered PWSs).	§§ 141.520, 141.521 & 141.522	January 14, 2005.
Begin Developing Disinfection Profile	§§ 141.530–141.536	July 1, 2003 for systems serving between 500 and 9,999 persons and January 1, 2004 for systems serving fewer than 500 persons.
Complete the Disinfection Profile	§§ 141.530–141.536	July 1, 2004 for systems serving between 500 and 9,999 persons and January 1, 2005 for systems serving fewer than 500 persons.
Combined Filter Effluent Turbidity Limits	§§ 141.550, 141.551, 141.552, & 141.553.	January 11, 2005.
Individual Filter Turbidity Monitoring	§§ 141.560, 141.561, 141.562, 141.563, 141.564.	January 11, 2005.

2. What Major Comments Were Received?

Many commenters noted that they would not support requirements that would take place prior to two years after the promulgation of today's final rule. Several others recommended requiring that no portions of the rule should take effect until three years after the date of promulgation. The Agency does agree that to the extent possible, implementation should be minimized in the first two years after the promulgation of the rule. However, today's final rule requires systems serving fewer than 500 persons to begin profiling in January 2004, while systems serving greater than 500 to 9,999 persons are required to begin profiling in July 2003. This would allow time for States to work with systems, yet still provide profiling data prior to compliance sampling under the Stage 1 DBPR.

I. What Public Notification and Consumer Confidence Report Requirements Are Contained in the LT1ESWTR?

Today's final rule modifies the Public Notification (PN) requirements found in Appendix A and B of subpart Q of Part 141 to include public notification requirements for systems subject to the LT1ESWTR that are consistent with those for systems subject to the IESWTR.

Today's rule does not specifically modify the Consumer Confidence Report (CCR) Requirements found in subpart O of Part 141. However, consumer confidence reports must contain any violations of treatment techniques or requirements of NPDWRs as specified in § 141.153(d)(6) and § 141.153(f). This includes any such violations of the LT1ESWTR.

Updated CCR and PN appendices can be found on the Agency's Web site at *http://www/epa.gov/safewater/tables.html*.

IV. State Implementation

A. What Special State Primacy Requirements does the LT1ESWTR Contain?

In addition to adopting drinking water regulations at least as stringent as the Federal regulations of the LT1ESWTR, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA. This information advises the regulated community of State requirements and assists EPA in its oversight of State programs.

Under the final LT1ESWTR, there are several special primacy requirements that a State's application must include:

—Description of how the State will consult with the system and approve modifications to disinfection practices;

—Description of how the State will approve a more representative data set for optional monitoring and profiling under §§ 141.530–141.536.

—Description of how existing rules, adoption of appropriate rules or other authority under § 142.16(i)(1) require systems to participate in a Comprehensive Technical Assistance (CTA) activity, and the performance improvement phase of the Composite Correction Program (CCP);

—Description of how the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, chlorine dioxide, or ozone for primary disinfection; and

—For alternative filtration technologies (filtration other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration), a description of how the State will determine under § 142.16(i)(2)(iv), that a PWS may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with the disinfection treatment that meets the requirements of subpart T of this title, consistently achieves 3-log (99.9 percent) removal and/or inactivation of *Giardia lamblia* cysts and 4-log (99.99 percent) removal and/or inactivation of viruses, and 2-log (99 percent) removal of *Cryptosporidium* oocysts; and a description of how, for the

system that makes this demonstration, the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time.

B. What State Recordkeeping Requirements Does the LT1ESWTR Contain?

Today's rule includes changes to the existing recordkeeping provisions to implement the requirements in today's final rule. States must maintain records of the following:

(1) Records of turbidity measurements;

(2) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness;

(3) Decisions made on a system-by-system basis and case-by-case basis under provisions of section 141, subpart H or subpart P or subpart T;

(4) Records of systems consulting with the State concerning a significant modification to their disinfection practice (including the status of the consultation);

(5) Records of decisions that a system using alternative filtration technologies can consistently achieve a 2-log (99 percent) removal of *Cryptosporidium* oocysts, as well as the required levels of removal and/or inactivation of Giardia and viruses for systems using alternative filtration technologies, including State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised and the State must provide a copy of the decision to the system, and;

(6) Records of those systems required to perform filter self-assessments, CPE or CCP.

C. What State Reporting Requirements Does the LT1ESWTR Contain?

Currently States must report information to EPA under section 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. There are no additional requirements under this rule, but States are required to report violations, variances and exemptions, and enforcement actions related to this rule.

D. How Must a State Obtain Interim Primacy for the LT1ESWTR?

To maintain primacy for the Public Water Supply Supervision (PWSS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's final rule. A State must submit a request for approval of program revisions that adopt the revised MCL or treatment technique and implement regulations within two years of promulgation, unless EPA approves an extension per § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

V. Economic Analysis (Health Risk Reduction and Cost Analysis)

This section summarizes the Health Risk Reduction and Cost Analysis (HRRCA) in support of the LT1ESWTR as required by section1412(b)(3)(C) of the 1996 SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the LT1ESWTR. EPA has prepared an economic analysis to comply with the requirements of this order and the SDWA Health Risk Reduction and Cost Analysis (USEPA, 2001a). The final economic analysis has been published on the Agency's Web site, and can be found at *http://www.epa.gov/safewater/lt1eswtr*. The analysis can also be found in the docket for this rulemaking.

EPA has estimated the total annualized cost for implementing the LT1ESWTR and analyzed the total benefits that result from the rule. Total annual costs for the rule are $39.5 million, in 1999 dollars, using three percent discount rate [$44.8 million using a seven percent discount rate]. The cost estimate includes capital costs for treatment changes and start-up and annual labor costs for monitoring and reporting activities. More detailed information, including the basis for these estimates and alternate cost estimates using different cost of capital assumptions are described in the LT1ESWTR economic analysis (USEPA, 2001a). Combining the value of illness and mortalities avoided, the estimate of the total quantified annual benefits of the LT1ESWTR range from $18.9 million to $90.9 million. However, this range does not incorporate many of the sources of uncertainty related to quantifying benefits, including many benefits the Agency was unable to evaluate. Accordingly, incorporating additional uncertainties would necessarily increase the size of the range. For example, the number of avoided cases of cryptosporidiosis might be higher or lower than the number reflected in this range. More detailed information, including the basis for these estimates, are described in the LT1ESWTR economic analysis (USEPA, 2001a).

A. What Are the Costs of the LT1ESWTR?

In estimating the costs of today's final rule, the Agency considered impacts on PWSs and on States (including territories and EPA implementation in non-primacy States). The LT1ESWTR will result in increased costs to public water systems for implementing the components of today's final rule. States will also incur implementation costs. EPA estimates that the annualized cost of today's final rule will be $39.5 million using a three percent discount rate ($44.8 million using a seven percent discount rate).

Approximately 84 percent ($33.1 million using a 3 percent discount rate and $38.2 million using a 7 percent discount rate) of the rule's total annual costs are imposed on drinking water utilities. States incur the remaining 16 percent ($6.4 million using 3 percent and $6.6 million using 7 percent) of the LT1ESWTR's total annual cost. The turbidity provisions, which include treatment changes, monitoring, and reporting, account for the largest portion of the total rule costs ($37.7 million using 3 percent and $42.7 million using 7 percent). Systems will incur most of the turbidity provision costs and this is discussed in more detail in the next section. The national estimate of annual system costs is based on estimates of system-level costs for the rule and estimates of the number of systems expected to incur each type of cost. Total capital costs for the LT1ESWTR (non-annualized) is $173.6 million.

Turbidity Provision Costs—The turbidity provisions are estimated to cost both public drinking water systems and States approximately $37.7 million annually using a three percent discount rate ($42.7 million using 7 percent). However, the majority of these costs will be borne by the systems and are the result of treatment changes to meet the 0.3 NTU turbidity standard as well as the cost for some systems to purchase turbidimeters in order to meet the monitoring requirements of this rule. The Agency estimates that 2,207 systems will modify their water treatment in response to this rule provision while 2,327 conventional and direct filtration systems will need to install turbidimeters. In addition to the capital costs associated with this rule

provision there will also be increases in operation and maintenance (O&M) costs. These combined capital and O&M costs have an estimated cost to systems of $27.1 million annually using a 3 percent discount rate ($31.8 million using a 7 percent discount rate). The O&M expenditures account for 59 percent of the $27.1 million using a 3 percent discount rate ($31.8 million using a 7 percent discount rate) while the remaining 41 percent represents annualized capital costs. In addition to the turbidity treatment costs, turbidity monitoring costs apply to all small surface water or GWUDI systems using conventional or direct filtration methods. There are an estimated 5,817 systems that fall under this criterion. The annualized individual filter turbidity monitoring cost to PWSs is approximately $4.5 million using a 3 percent discount rate ($4.7 million using 7 percent). In addition to the turbidity treatment and monitoring costs, individual filter turbidity exceedance reporting is estimated to cost systems $0.6 million annually (using either a 3 percent or 7 percent discount rate).

The Agency estimated that the total State cost for the turbidity provision (monitoring and exceptions) is $6.1 million annually (using either a 3 percent or 7 percent discount rate), with start-up and monitoring comprising of 81 percent of these annual costs ($4.9 million annually using either a 3 percent or 7 percent discount rate). The remaining $1.2 million (using either a 3 percent or 7 percent discount rate) in annual costs includes the costs for States to review the individual filter turbidity exceedance reports and individual filter self-assessment costs.

Disinfection Benchmarking Costs—The disinfection benchmarking provision involves three components: benchmarking, profiling, and optional monitoring. The start-up costs for this provision are estimated to cost systems $2.9 million ($0.2 million annualized using a three percent discount rate and $0.3 million using a seven percent discount rate). Disinfection benchmarking and profiling are estimated to cost systems approximately $0.4 million annually using a 3 percent discount rate ($0.5 million using 7 percent). TTHM and HAA5 monitoring is optional and estimated to cost $0.3 million annually using a 3 percent discount rate ($0.4 million using a 7 percent discount rate). State disinfection benchmarking annualized costs are estimated to be $0.4 million using a 3 percent discount rate ($0.5 million using a 7 percent discount rate). This estimate includes start-up, compliance tracking/recordkeeping, and consultation costs.

Covered Finished Water Reservoir Provision Costs—The LT1ESWTR requires that small systems cover all newly constructed finished water reservoirs, holding tanks, or other storage facilities for finished water. Total annual costs, including annualized capital costs and one year of O&M costs are expected to be $0.8 million (using either a 3 percent or 7 percent discount rate) for this provision. This estimate is calculated from a projected construction rate of new reservoirs and unit cost assumptions for covering new finished water reservoirs. Also, the Agency believes that this is an overestimate since there may be additional States that currently require finished water requirement.

Although EPA has estimated the cost of all the rule's components on drinking water systems and States, there are some costs that the Agency did not quantify. These non-quantifiable costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA did not estimate a cost for systems to acquire land if they needed to build a treatment facility or significantly expand their current facility because the need for and cost of land is highly system specific. Additionally, if the cost for land was prohibitive, an alternative compliance option may be available (such as connecting to another source). Once again, the Agency has not quantified costs for this scenario due to the high degree of site specificity. However, based on evaluations of Comprehensive Performance Evaluations (CPEs), EPA believes that most systems possess more than adequate property to construct new facilities.

In addition, other LT1ESWTR provisions may affect some systems but the Agency was not able to quantify these costs. These non-quantified costs include those for systems that incur incremental costs increases as a result of including *Cryptosporidium* in the definition of GWUDI and also by including *Cryptosporidium* in the watershed control requirements for unfiltered systems. The Agency lacked data on the number of systems potentially affected by these two provisions and was therefore, unable to estimate their costs. By including *Cryptosporidium* in the definition, more ground water systems may be determined to be under the direct influence of surface water resulting in additional cost because these systems must comply with the 1989 Surface Water Treatment Rule and today's rule. EPA also did not estimate the costs for unfiltered systems to control *Cryptosporidium* in their watersheds. These systems already control for other pathogens from similar sources as *Cryptosporidium* so it is likely that this provision will have a relatively minor impact.

B. What Are the Household Costs of the LT1ESWTR?

The mean annual cost per household is $6.24 and the cost per household is less than $15 for 90 percent of 6.3 million households potentially affected by today's final rule. Of the remaining households, nine percent will experience a range of annual costs from $15 to $120 ($10/month), while only one percent of households are estimated to experience annual costs exceeding $120.

As indicated in the economic analysis supporting today's final rule, per-household costs exceed $240/year for approximately 5,600 households out of the 6.3 million households potentially impacted by the LT1ESWTR. However, this analysis likely overestimates costs for most of these households, allowing that systems might choose to incur costs with up to 28 separate treatment changes when in fact it is likely to be more cost-effective to install a new treatment system. (This can be thought of as building an automobile piece by piece from an auto parts store compared to buying one at a dealership.) The aforementioned 5,600 households are associated with the end of the cost distribution where systems undertake an unrealistically large number of treatment changes.

C. What Are the Benefits of the LT1ESWTR?

The primary benefits of today's final rule come from reductions in the risks of microbial illness from drinking water. In particular, LT1ESWTR focuses on reducing the risk associated with disinfection resistant pathogens, such as *Cryptosporidium.* Exposure to other pathogenic protozoa, such as *Giardia,* or other waterborne bacteria, viral pathogens, and other emerging pathogens are likely to be reduced by the provisions of this rule as well, but are not quantified. In addition, LT1ESWTR produces non-quantifiable benefits associated with the risk reductions that result from the uncovered reservoir provision, including *Cryptosporidium* in GWUDI definition, and including *Cryptosporidium* in watershed requirements for unfiltered systems. Non-quantifiable benefits also include reducing the risks to sensitive subpopulations and the likelihood of

incurring costs associated with outbreaks.

1. Quantifiable Health Benefits

The quantified benefits from this rule are based solely on the reductions in the risk of cryptosporidiosis that result from the turbidity provision. As a result of data limitation, this analysis only addresses endemic illness and not illness that results from epidemic disease outbreaks. *Cryptosporidiosis* is an infection caused by *Cryptosporidium* which is an acute, self-limiting illness lasting 7 to 14 days, with symptoms that include diarrhea, abdominal cramping, nausea, vomiting and fever (Juranek, 1995). The monetized value of an avoided case of cryptosporidiosis is estimated to range from $796 to $1,411 per case based on a cost-of-illness methodology (Harrington et al., 1985; USEPA 2001a). The high end of the range includes losses for medical costs, work time, productivity, and leisure time. However, the low end of the range only values medical costs and work time. The medical costs may be overestimated as they are assumed to be the same as medical costs for a case of Giardiasis which has a significantly longer duration. However, the Agency believes it is appropriate not to prorate medical costs for the shorter duration of Cryptosporidiosis because (1) available data suggests that the median length of hospital stays is essentially the same for Cryptosporidiosis compared to Giardiasis; (2) the Harrington et al. study was conducted in the mid-1980's, and consequently, the higher direct medical costs associated with treating individuals with HIV/AIDS, who are more severely impacted by Cryptosporidiosis, was not included; and (3) Cryptosporidiosis has no known medical treatment and available data indicates that the range of the length of hospital stays for immunocompromised individuals is larger for cases of Cryptosporidiosis compared to Giardiasis. The Agency also recognizes however, that many individuals with Cryptosporidiosis do not seek medical treatment and thus have little or no associated medical cost, and that the percentage of such cases may be higher for Cryptosporidiosis than Giardiasis given its shorter duration.

The benefits of the turbidity provisions of LT1ESWTR come from improvements in filtration performance at water systems. The benefits analysis accounts for some of the variability and uncertainty in the analysis by estimating benefits under two different current treatment and three improved removal assumptions. In addition, EPA used Monte Carlo simulations to derive a distribution of estimates to address uncertainty.

In order to quantify the benefits of this rule, the Agency estimated changes in the incidence of cryptosporidiosis that would result from the rule. The analysis included estimating the baseline (pre-LT1ESWTR) level of exposure and risk from *Cryptosporidium* in drinking water and the reductions in such exposure and risk resulting from the turbidity provisions of the LT1ESWTR. Baseline levels of *Cryptosporidium* in finished water were estimated by assuming national source water occurrence distribution (based on data by LeChevallier and Norton, 1995) and a national distribution of *Cryptosporidium* removal by treatment.

In the LT1ESWTR economic analysis, the following two assumptions were made regarding the current *Cryptosporidium* oocyst removal performance to estimate finished water *Cryptosporidium* concentrations. First, based on treatment removal efficiency data presented in the proposal, EPA assumed a national distribution of physical removal efficiencies with a mean of 2.0 logs and a standard deviation of 0.63 logs. Because the finished water concentrations of oocysts represent the baseline against which improved removal from the LT1ESWTR is compared, variations in the log removal assumption could have considerable impact on the risk assessment. Second, to evaluate the impact of the removal assumptions on the baseline and resulting improvements, an alternative mean log removal/inactivation assumption of 2.5 logs and a standard deviation of 0.63 logs were also used to calculate finished water concentrations of *Cryptosporidium.*

For each of the two baseline assumptions, EPA assumed that a certain number of plants would show low, mid, or high improved removal as a result of the turbidity provisions. The amount of improved removal depends upon factors such as water matrix conditions, filtered water turbidity effluent levels, and coagulant treatment conditions. The low, mid, and high improved removals were derived from Patania et al., (1995). This study demonstrated that an incremental decrease in turbidity from 0.3 NTU to 0.1 NTU (or a 0.2 NTU reduction overall) resulted in increased oocyst removals of up to one-log. The Agency used this data to construct low, mid, and high removal assumptions that would capture uncertainty associated with improved removal. The Agency also utilized different low, mid, and high removal assumptions for distinct categories of current turbidity performance (<.2NTU, 0.2–0.3 NTU, 0.3–0.4 NTU, and > 0.4 NTU). For instance, systems currently operating at greater than 0.4 NTU would need to target 0.2 NTU to ensure compliance with the 0.3 NTU limit and EPA accordingly assumed a low improved removal of 0.5-log, a mid improved removal of 0.75-log and a high improved removal of 0.9-log. However, systems currently operating between 0.2 NTU and 0.3 NTU were only expected to minimally improve turbidity performance and would therefore only expect improved log removals of 0.15, 0.25, and 0.3 (low, mid, and high). As a result, the economic analysis considers various baseline and with-rule scenarios to develop a range of endemic health damages avoided. Additional information is found in the Benefits chapter of the Economic Analysis supporting today's final rule.

The finished water *Cryptosporidium* distributions that would result from additional log removal with the turbidity provisions were derived assuming that additional log removal was dependent on current removal, i.e., that systems currently operating at the highest filtered water turbidity levels would show the largest improvements or high improved removal assumption. For example, plants now failing to meet a 0.4 NTU limit would show greater removal improvements than plants now meeting a 0.3 NTU limit.

In addition to assuming the more conservative baseline and removal assumptions, the lower-end of the LT1ESWTR's benefit estimate does not include valuations for leisure time, productivity losses (returning to work but still experiencing symptoms), and other loss categories that the authors discuss but do not quantify (e.g., ''high valued'' leisure). The authors (Harrington *et al.*) were highly confident in the estimates for direct medical expenditures and work losses which comprise the lower benefit estimate; and less confident in the values for leisure time losses and productivity losses which are included in the upper benefit estimate only. The decreased level of confidence was based on the data and methods used to estimate only these losses. The authors also conclude that: ''* * * nonetheless, the loss categories in this group–[productivity, leisure time, etc.] are unquestionably present and therefore, raise losses above those reported in [the lower-end benefit estimate]''. The Agency believes that these categories have positive value as stated in Harrington *et al.* consequently the lower-end estimate for the

LT1ESWTR understates the true value of these loss categories.

The Agency further notes that the medical expense component of the valuation may be overstated because it is not prorated for the shorter duration of Cryptosporidiosis relative to Giardiasis (mean duration of 11.5 v. 41.6 days). The Agency believes this is appropriate however, because (1) available data suggests that the median length of hospital stays is essentially the same for Cryptosporidiosis compared to Giardiasis; (2) the Harrington et al. study was conducted in the mid-1980's, and consequently, the higher direct medical costs associated with treating individuals with HIV/AIDS, who are more severely impacted by Cryptosporidiosis, was not included; and (3) Cryptosporidiosis has no known medical treatment and available data indicates that the range of the length of hospital stays for immunocompromised individuals is larger for cases of Cryptosporidiosis compared to Giardiasis. The Agency also recognizes however, that many individuals with Cryptosporidiosis do not seek medical treatment and thus have little or no associated medical cost, and that the percentage of such cases may be higher for Cryptosporidiosis than Giardiasis given its shorter duration.

Table V.1 indicates estimated annual quantified benefits associated with implementing the LT1ESWTR. The benefits analysis examines only the endemic health damages avoided based on the LT1ESWTR for each of the turbidity provision scenarios discussed previously. For each of these scenarios, EPA calculated the mean of the distribution of the number of illnesses avoided. The 10th and 90th percentiles imply that there is a 10 percent chance that the estimated value could be lower than the 10th percentile and there is a 10 percent chance that the estimated value could be higher than the 90th percentile. The modeling assumptions used to obtain the distribution of illness and mortality avoided for each baseline and the removal scenarios considers both variability and uncertainty. Specifically, the Agency used a 2-dimensional Monte Carlo simulation to include both uncertainty and variability inputs. The components that EPA considered uncertain include the probability of illness given an infection, the variability of *Cryptosporidium* to cause either an infection or illness, and the infectivity dose-response factor. The variability components include: *Cryptosporidium* occurrence in the finished water, individual daily drinking water consumption, and the number of days per year of exposure.

In the 2-dimensional simulation structure, a set of values for the uncertainty parameters is chosen from their respective distributions. This set of values is then ''frozen'' and a specified number of iterations are run where different values are chosen for the variability factors. This process is repeated for some specified number of sets of uncertainty parameters. For this analysis, 250 sets of uncertainty parameters were used, with 1,000 variability iterations performed on each of the 250 uncertainty sets.

This modeling exercise provides the Agency with 250 sets of statistics for individual annual risk of illness (e.g., mean, standard deviation) that each reflect different possible combinations of uncertainty factors. The 250 estimates for each set of statistics (i.e., mean, confidence intervals) were then used to compute an overall population average annual risk of illness.

Next, the Agency estimates cases of illness and mortality from the average annual risk of illness estimates. In order to do this, the average annual probability of illness is multiplied by the number of exposed individuals. In a separate Monte Carlo simulation for this calculation, the average annual probability of illness is treated as an uncertainty variable. As a result, the Agency has mean estimates with confidence intervals for various baseline and post LT1ESWTR assumptions regarding *Cryptosporidium* removal from source water. The 90th percentile confidence bounds on the expected values largely reflect the following uncertainty variables: the probability of illness given infection, the variability of *Cryptosporidium* to cause either an infection or illness, and the infectivity dose-response factor.

The Agency has done its best to represent a reasonable range of quantifiable uncertainty using standard modeling techniques. However, the Agency recognizes that additional sources of uncertainty exist which could not be quantified. To the extent that these are significant, the true range of uncertainty may be greater than that reflected in the quantified analysis.

EPA has evaluated drinking water consumption data from USDA's 1994–1996 Continuing Survey of Food Intakes by Individuals (CSFII) Study. EPA's analysis of the CSFII Study using the ''all sources, consumer only'' information resulted in a daily water ingestion lognormally distributed with a mean of 1.2 liters per person per day (USEPA, 2000j). Results of alternative model calculations based on USDA consumption data for ''community water supplies, all respondents'' (mean of 0.93 liters per person per day) are presented in the appendix to the economic analysis as a lower bound estimate.

TABLE V.1.—QUANTIFIED BENEFITS FROM ILLNESSES AND MORTALITIES AVOIDED ANNUALLY FROM TURBIDITY PROVISIONS

[$Millions]*

Quantified benefits	Daily drinking water ingestion and baseline Cryptosporidium log-removal assumptions, $Millions, 1999					
	2.0 log			2.5 log		
	Low	Mild	High	Low	Mid	High
Mean Benefit from Avoided Illnesses	$23.9–$42.4	$31.6–$56.0	$32.9–$58.3	$9.5–$16.8	$11.2–$19.8	$12.7–$22.6
10th Percentile	11.4–20.3	15.2–27.0	14.1–24.9	2.2–3.9	2.8–5.0	4.2–7.5
90th Percentile	50.1–88.8	58.8–104.2	56.5–100.2	26.6–47.2	27.6–48.9	33.6–59.5
Mean Benefits from Avoided Mortalities	23.7	31.3	32.5	9.4	11.1	12.6
10th Percentile	11.3	15.0	13.9	2.2	2.8	4.2
90th Percentile	49.6	58.2	55.9	26.3	27.3	33.2
Total Mean Quantified Benefits	47.6–66.1	62.9–87.3	65.4–90.9	18.9–26.2	22.2–30.9	25.4–35.2

*Totals may not equal due to rounding.

According to the economic analysis performed for the LT1ESWTR published today, the rule is estimated to reduce the mean annual number of illnesses caused by *Cryptosporidium* in water systems with improved filtration performance by 12,000 to 41,000 cases per year depending upon which of the six baseline and improved *Cryptosporidium* removal assumptions was used, and assuming the 1.2 liter drinking water consumption distribution. Based on these values, the mean estimated annual benefits of reducing the illnesses ranges from $9.5 million to $58.3 million per year. The economic analysis also indicated that the rule could result in a mean reduction of 1 to 5 fatalities each year, depending upon the varied baseline and improved removal assumptions. Using a mean value of $6.3 million per statistical life saved, reducing these fatalities could produce benefits in the range of $9.4 million to $32.5 million. Combining the value of illness and mortalities avoided, the estimate of the total quantified annual benefits of the LT1ESWTR range from $18.9 million to $90.9 million. However, this range does not incorporate many of the sources of uncertainty related to quantifying benefits, including many benefits the Agency was unable to evaluate. Accordingly, incorporating additional uncertainties would necessarily increase the size of the range.

New occurrence data and infectivity data is currently being evaluated by the Agency in the context of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR). The analysis is currently ongoing and peer review has not been completed. EPA conducted a sensitivity analysis in the economic analysis supporting today's final rule to predict the effect that new data may have on the benefits presented earlier. Table V.2 provides a summary of this sensitivity analysis and depicts the cumulative change to the benefits range that each of the four new changes (new occurrence data, new infectivity data, new morbidity data, and new viability data) could have on benefits. The economic analysis includes a more detailed analysis using this data.

TABLE V.2.—SUMMARY OF RESULTS OF SENSITIVITY ANALYSIS TO PREDICT EFFECTS OF NEW DATA AND INFORMATION ON RANGE OF BENEFITS

	Current EA	New occurence data	New infectivity data	New morbidity data	New viability data
Change	No Changes	Occurrence changes from 4.7 oocyst/L to 1.06 oocyst/L.	Rate of infection from .00424 to .02317.	Morbidity changes from 0.39 to 0.5.	Viability changes from 16.4 percent to 55.2 percent.
Benefits Range	$18.9–$90.9	$5.4–$25.2	$17.3–$74.4	$22.5–$88.0	$51.2–$195.8

2. Non-Quantified Health and Non-Health Related Benefits

The quantified benefits from filter performance improvements do not fully capture all the benefits of the turbidity provision. Even the upper bound estimates, which are based on a cost-of-illness (COI) methodology (expanded to incorporate lost leisure time and lost productivity while working), may not fully capture the willingness-to-pay to avoid a case of Cryptosporidiosis. In addition, the Harrington, et al. study was conducted in the mid-1980's in a rural community and may not be fully representative of the current national population including individuals with HIV/AIDS and chemotherapy patients that are more severely impacted by Cryptosporidiosis. If this population was more accurately represented, it may be that the average per-case valuation would be higher than the range presented in this analysis. Further, the turbidity provisions are also expected to decrease the risk of waterborne disease outbreaks. However, the quantified benefits reflect only the reduction in endemic Cryptosporidiosis and not any outbreak-related illness or mortalities.

Other disinfection resistant pathogens may also be removed more efficiently due to implementation of the LT1ESWTR. Exposure to other pathogenic protozoa, such as *Giardia,* or other waterborne bacterial or viral pathogens are likely to be reduced by the provisions of this rule as well.

In addition to preventing illnesses, this rule is expected to have other non-health related benefits. During an outbreak, local governments and water systems must issue warnings and alerts and may need to provide an alternative source of water. Systems also face negative publicity and possibly legal costs. Businesses have to supply their customers and employees with alternative sources of water and some, especially restaurants, may even have to temporarily close. Households also have to boil their water, purchase water, or obtain water from another source. A study of a Giardia outbreak in Luzerne County, Pennsylvania showed that these non-health related outbreak costs can be quite significant (Harrington *et al.,* 1985). This outbreak resulted in an estimated loss to individuals of $31 million to $92 million. Additional losses were also calculated for restaurants and bars ($2 million to $7 million), government agencies ($0.4 million) and the water supply utility ($3 million).

The remaining rule provisions (disinfection benchmarking, covered finished water reservoirs, inclusion of *Cryptosporidium* in the GWUDI definition, and inclusion of *Cryptosporidium* in watershed control requirements for unfiltered systems) provide additional benefits. However, EPA is only able to discuss the benefits of these rule provisions qualitatively because of data limitations. The disinfection benchmark provision will ensure that adequate microbial protection is in place if a system must make changes to its disinfection practices as a result of the Stage 1 DBP rule. Covering finished water reservoirs will protect the finished water from becoming re-contaminated from such things as animal or bird droppings, surface water runoff, and algae. If *Cryptosporidium* is found in ground water supplies, they will be required to change treatment practice to prevent illness. Finally, by requiring *Cryptosporidium* control in watersheds of unfiltered systems, this will minimize the potential for illness and may also lower the overall costs of drinking water treatment.

D. What Are the Incremental Costs and Benefits?

EPA evaluated the incremental or marginal costs of today's final rule turbidity provision by analyzing various turbidity limits, 0.3 NTU, 0.2 NTU, and 0.1 NTU. For each turbidity limit, EPA developed assumptions about which process changes systems might implement to meet the turbidity level and how many systems would adopt each change. The comparison of total compliance cost estimates shows that costs are expected to increase

significantly across other turbidity limits considered by the Agency. The total cost of a 0.2 NTU limit is 346 percent higher than the final rule limit of 0.3 NTU, and a 0.1 NTU limit would be 1,192 percent higher.

E. Are There Benefits From the Reduction of Co-Occurring Contaminants?

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. For example, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants including arsenic.

The technologies used to reduce individual filter turbidities have the potential to reduce concentrations of other pollutants as well. Reductions in turbidity that result from today's proposed rule are aimed at reducing *Cryptosporidium* by physical removal. However, health risks from *Giardia lamblia* and emerging disinfection resistant pathogens, such as microsporidia, *Toxoplasma,* and *Cyclospora,* are also likely to be reduced as a result of improvements in turbidity removal. The frequency and extent that LT1ESWTR would reduce risk from other contaminants has not been quantitatively evaluated because of the Agency's lack of data on the removal efficiencies of various technologies for emerging pathogens and the lack of co-occurrence data for microbial pathogens and other contaminants from drinking water systems.

F. Is There Increased Risk From Other Contaminants?

It is unlikely that LT1ESWTR will result in any increased risk from other contaminants. Improvements in plant turbidity performance will not result in any increases in risk. In fact the disinfection benchmarking component of today's final LT1ESWTR will provide information to systems so they can minimize the increased risk from microbial contaminants as they take steps to address risks associated with DBPs under the Stage 1 DBPR.

G. What Are the Uncertainties in the Risk, Benefit and Cost Estimates for the LT1ESWTR?

EPA has included in the economic analysis, a detailed discussion of the possible sources of uncertainty in risk, benefit and cost estimates. Some sources of possible uncertainty associated with calculation of risk and benefits include occurrence of *Cryptosporidium* oocysts in source waters and finished waters, reduction of *Cryptosporidium* oocysts due to improved treatment, viability and infectivity of *Cryptosporidium* oocysts, characterization of risk, and willingness to reduce risk and avoid costs. Uncertainty associated with costs includes assumptions with respect to treatment a system might choose to employ to comply with the rule, assumptions about costs of labor, maintenance, and capital, and the number of systems expected to undertake certain activities. The Agency believes that the risks, benefits, and costs have been accurately portrayed. Discussions and analyses of risks, benefits, and costs in the economic analysis indicate where uncertainty may be introduced and to the extent possible, the effect uncertainty may have on analysis (USEPA, 2001a).

H. What Is the Benefit/Cost Determination for the LT1ESWTR?

The Agency has determined that the benefits of the LT1ESWTR justify the costs. As shown in Table V.3, the quantified net benefits of this rule based on the Agency's estimate range from $20.6 million to $51.4 million using the 3 percent discount rate ($25.9 million to $46.1 million at the 7 percent discount rate). Additionally, EPA believes that quantified net benefits would be larger if both unquantified benefits and costs were able to be monetized.

TABLE V.3.—ANNUALIZED NET BENEFITS OF THE LT1ESWTR, MILLIONS, 1999 DOLLARS

	Benefit range	Costs using a 3 percent discount rate	Costs using a 7 percent discount rate	Net benefits (3 percent)	Net benefits (7 percent)
Estimate of Benefits	$18.9–$90.9	$39.5	$44.8	$−20.6–$51.4	$−25.9–$46.1

VI. Other Requirements

A. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 603 of the RFA, EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from representatives of small entities that would potentially be regulated by the rule in accordance with section 609(b) of the RFA. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report found in the docket for today's final rule (USEPA, 1998k). The Panel recommendations emphasized the need to provide small systems flexibility. The Agency has structured today's final

LT1ESWTR with an emphasis on providing flexibility and reducing burden for small systems. For example, the Agency originally contemplated requiring four quarters of TTHM and HAA5 monitoring and disinfection profiling based on daily measurements. Today's final rule requires profiling based on weekly measurements and allows systems the option of using one quarter of TTHM and HAA5 monitoring to opt-out of profiling. Today's rule also provides systems with two or fewer filters the flexibility to monitor combined filter effluent in lieu of individual filter turbidity monitoring, effectively allowing these systems to reduce their recordkeeping burden. A complete summary of the Panel's recommendations is presented in the proposal (65 FR 19046, 19127–19130).

While EPA could have certified the proposed rule based on the proposed rule requirements, the Agency originally developed an IRFA (see 65 FR 19046, 19126–19127) and convened an SBAR Panel because several of the additional alternatives EPA was requesting comment on would have resulted in substantial costs for small systems thereby preventing the Agency from certifying. While EPA included these additional alternatives in the proposal and estimated costs in the economic analysis for the proposal, the Agency re-evaluated the economic effects on small entities after publication of the April 10, 2000 LT1ESWTR proposal using the rule requirements of today's final rule and was able to certify that today's final rule will not have a significant economic impact on a substantial number of small entities.

EPA's analysis showed that of the approximately 11,000 small entities potentially affected by the LT1ESWTR, over 5,000 are expected to incur average annualized costs of less than $70 dollars (0.003 percent of average annual revenue) while slightly more than 3,000 are expected to incur average annualized costs of less than $850 dollars (0.03 percent of average annual revenue). Of the remaining systems, approximately 500 systems are expected to incur average annualized costs of approximately $2,500 dollars (0.1 percent of average annual revenue), approximately 2,000 systems are expected to incur average annualized costs of approximately $13,000 dollars (0.6 percent of average annual revenue). Less than 100 systems are expected to incur average annualized costs of approximately $15,700 dollars (0.7 percent of average annual revenue). The Agency has included a detailed description of this analysis in the Regulatory Flexibility Screening Analysis prepared for the rule (USEPA, 2000e).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, and has assigned OMB control number 2040–0229. The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, in some cases, and to evaluate compliance with the rule. For the first three years after February 13, 2002, the major information requirements are related to disinfection profiling activities. The information collection requirements in §§ 141.530–141.536, 141.540–141.544, 141.550–141.553, 141.560–141.564, and 141.570–141.571, for systems, and §§ 142.14 and 142.16, for States, are mandatory. The information collected is not confidential. The final estimate of aggregate annual average burden hours for LT1ESWTR is 330,329. Annual average aggregate cost estimate is $1,583,538 for capital (expenditures for monitoring equipment), and $1,919,563 for operation and maintenance including lab costs (which is a purchase of service). The burden hours per response is 21.8. The frequency of response (average responses per respondent) is 2.8 annually. The estimated number of likely respondents is 5,404 (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

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 UMRA section 202, 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 by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one 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.

EPA has determined that this rule 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. The estimated annual cost of this rule is $39.5 million. Thus today's rule is not

subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Of the approximately 6,500 small government entities potentially affected by the LT1ESWTR, approximately 3,000 are expected to incur average annualized costs of less than $70 dollars (0.003 percent of average annual revenue) while approximately 2,000 are expected to incur average annualized costs of less than $850 dollars (0.03 percent of average annual revenue). Of the remaining systems, less than 300 are expected to incur average annualized costs of approximately $2,500 dollars (0.1 percent of average annual revenue), approximately 1,200 systems are expected to incur average annualized costs of approximately $13,000 dollars (0.6 percent of average annual revenue). Less than 100 systems are expected to incur average annualized costs of approximately $15,700 dollars (0.7 percent of average annual revenue). While today's final rule only applies to systems serving fewer than 10,000, it is not unique as it provides a comparable level of health protection to individuals served by small systems as the IESWTR provided to individuals served by large systems. While there are small differences between the LT1ESWTR and IESWTR, these differences reflect an effort to reduce burden for small systems while still maintaining a comparable level of health protection. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

Nevertheless, EPA has tried to ensure that State, local, and Tribal governments had opportunities to provide comment. EPA consulted with small governments to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. As discussed next, a variety of stakeholders, including small governments, were provided the opportunity for timely and meaningful participation in the regulatory development process. EPA used these opportunities to notify potentially affected small governments of regulatory requirements being considered.

EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998. Two public stakeholder meetings, which were announced in the **Federal Register**, were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. Stakeholders include representatives of State, local and Tribal governments, environmental groups and publicly owned and privately owned public water systems. In addition to these meetings, EPA has held several formal and informal meetings with stakeholders including the Association of State Drinking Water Administrators and representatives of State and local elected officials. A summary of each meeting and attendees is available in the public docket for this rule. EPA also convened a Small Business Advocacy Review (SBAR) Panel in accordance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns including those of small local governments. The SBAR Panel allows small regulated entities to provide input to EPA early in the regulatory development process. In early June 1999, EPA mailed an informal draft of the LT1ESWTR preamble to the approximately 100 stakeholders who attended one of the public stakeholder meetings. Members of trade associations and the SBREFA Panel also received the draft preamble. EPA received valuable suggestions and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. The majority of concerns dealt with reducing burden on small systems and maintaining flexibility.

To inform and involve Tribal governments in the rulemaking process, EPA presented the LT1ESWTR at three venues: the 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the EPA/Inter Tribal Council of Arizona, Inc. Tribal consultation meeting. Over 900 attendees representing Tribes from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At the first two conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1ESWTR.

At the EPA/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. The presentation materials and meeting summary were sent to over 500 Tribes and Tribal organizations. Additionally, EPA contacted each of the 12 Native American Drinking Water State Revolving Fund Advisors to invite them, and representatives of their organizations to the stakeholder meetings described previously.

During the comment period for today's final rule, the Agency held a public meeting in Washington D.C. on April 14, 2000. Additionally, the proposed rule was either presented or discussed in nearly 50 meetings across the U.S. Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders requesting comment. EPA received 67 comments from a variety of stakeholders including 24 States, 21 municipalities, one Tribe, one elected official, two consultants, eight trade groups, and four private industries.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about the LT1ESWTR requirements. The Agency is developing plain-English guidance that will explain what actions a small entity must take to comply with the rule. Also, the Agency has developed a fact sheet that concisely describes various aspects and requirements of the LT1ESWTR. This fact sheet is available by calling the Safe Drinking Water Hotline at 800–426–4791.

D. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 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 voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that systems complying with this rule need to use one of three previously approved technical standards already included in § 141.74 (a). Method 2130B (APHA, 1995), is published in Standard Methods for the Examination of Water and Wastewater (19th ed.) and is a voluntary consensus standard. The Great Lakes Instrument Method 2, has been approved by USEPA as an alternate test procedure (Great Lakes Instruments, 1992). EPA Method 180.1 for turbidity measurement was published in August 1993 in Methods for the Determination of Inorganic

Substances in Environmental Samples (EPA–600/R–93–100) (USEPA, 1993).

Today's final rule also requires calibration of the individual turbidimeter to be conducted using procedures specified by the manufacturer. EPA encouraged comments on this aspect of the rulemaking and specifically invited the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation. EPA received no comments on this issue.

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

This preamble has discussed how the IESWTR served as a template for the development of the LT1ESWTR. As such, the Agency also built on the efforts conducted during the IESWTRs development to comply with Executive Order 12898. On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, Tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between 11 cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 meeting were to:

—Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;
—Identify key issues of concern to stakeholders, and;
—Receive suggestions from stakeholders concerning ways to increase representation of communities in EPA's Office of Water drinking water regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

The LT1ESWTR applies to community water systems, non-transient non-community water systems, and transient non-community water systems that use surface water or GWUDI as their source water for PWSs serving less than 10,000 people. These requirements will also be consistent with the protection already afforded to people being served by systems serving 10,000 or more persons.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and; (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we therefore have assessed the environmental health effects of *Cryptosporidium* on children. The results of this assessment are contained in the LT1ESWTR economic analysis (USEPA, 2001a). A copy of the analysis and supporting documents are found in the public docket for today's final rule (W–99–10, Final Long Term 1 Enhanced Surface Water Treatment Rule. The docket is available for public review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460.

The risk of illness and death due to cryptosporidiosis depends on several factors, including age, nutrition, exposure, genetic variability, disease and immune status of the individual. Mortality resulting from diarrhea shows the greatest risk of mortality occurring among the very young and elderly (Gerba *et al.,* 1996). For *Cryptosporidium,* young children are a vulnerable population subject to infectious diarrhea (CDC 1994). Cryptosporidiosis is prevalent worldwide, and its occurrence is higher in children than in adults (Fayer and Ungar, 1986).

Cryptosporidiosis appears to be more prevalent in populations, such as infants, that may not have established immunity against the disease and may be in greater contact with environmentally contaminated surfaces (DuPont, *et al.,* 1995). An infected child may spread the disease to other children or family members. Evidence of such secondary transmission of cryptosporidiosis from children to household and other close contacts has been found in a number of outbreak investigations (Casemore, 1990; Cordell *et al.,* 1997; Frost *et al.,* 1997). Chapelle et al., (1999) found that prior exposure to *Cryptosporidium* through the ingestion of a low oocyst dose provides protection from infection and illness. However, it is not known whether this immunity is life-long or temporary. Data

also indicate that either mothers confer short term immunity to their children or that babies have reduced exposure to *Cryptosporidium,* resulting in a decreased incidence of infection during the first year of life. For example, in a survey of over 30,000 stool sample analyses from different patients in the United Kingdom, the one to five year age group suffered a much higher infection rate than individuals less than one year of age. For children under one year of age, those older than six months of age showed a higher rate of infection than individuals aged fewer than six months (Casemore, 1990).

EPA has not been able to quantify the health effects for children as a result of Cryptosporidium-contaminated drinking water. However, the result of the LT1ESWTR will be a reduction in the risk of illness for the entire population, including children. Because available evidence indicates that children may be more vulnerable to Cryptosporidiosis than the rest of the population, the LT1ESWTR would, therefore, result in greater risk reduction for children than for the general population.

H. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the SDWA, the Agency consulted with the National Drinking Water Advisory Council (NDWAC), the Secretary of Health and Human Services, and the EPA Science Advisory Board (SAB) on the proposed LT1ESWTR. None of the three consultations resulted in substantive comments on the LT1ESWTR.

On March 13 and 14, 2000 in Washington, DC, the Agency met with SAB during meetings open to the public where several of the Agency's drinking water rules were discussed. A copy of the SAB's comments are found in the docket (USEPA, 2000l). Comments on the LT1ESWTR were generally supportive.

On May 10, 2000 in San Francisco, California, the Agency met with NDWAC. A copy of the materials presented to the NDWAC, as well as the charge presented to the council are found in the docket (USEPA, 2000f, NDWAC, 2000).

EPA invited the Secretary of Health and Human Services to the April 14th, 2000 informational meeting regarding the proposed Long Term 1 Enhanced Surface Water Treatment Rule and consulted with the Centers for Disease Control (CDC) during a June 20, 2000 conference call with the Centers' Working Group on Waterborne Cryptosporidiosis. The meeting notes for that call are found in the docket (CDC, 2000). CDC's role as an Agency of the Department of Health and Human Services is to provide a system of health surveillance to monitor and prevent the outbreak of diseases. With the assistance of States and other partners, CDC guards against international disease transmission, maintains national health statistics, and provides for immunization services and supports research into disease and injury prevention.

I. Executive Order 13132: Executive Orders on 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 Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rule does not have a substantial direct effect on local and State governments because it is not expected to impose substantial direct compliance costs. The rule imposes annualized compliance costs on State and local governments of approximately $30.6 million. $6.4 million of these costs are attributable to States, while $24.2 million is attributable to local governments serving fewer than 10,000 persons. As described in Section V1.A of the preamble for today's final rule, this rule will not have a significant economic impact on a substantial number of small entities, including small governments. Furthermore, the rule does not have a substantial direct effect on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 because the rule does not change the current roles and relationships of the Federal government, State governments and local governments in implementing drinking water programs. Thus Executive Order 13132 does not apply to this rule. Although the Executive Order does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition to our outreach efforts described earlier, on May 30, 2000, the Agency held a meeting in Washington, DC with ten representatives of elected State and local officials to discuss how new Federal drinking water regulations (LT1ESWTR, FBRR, Ground Water Rule, Radon Rule, Radionuclides Rule, and Arsenic Rule) may affect State, county, and local governments. Throughout the consultation, stakeholders asked EPA for clarification of basic concepts and rule elements. EPA addressed these issues throughout the consultation and provided background and clarification to promote better understanding of the issues. For example, stakeholders asked EPA to describe what *Cryptosporidium* is and how individuals are diagnosed with cryptosporidiosis. A detailed summary of this consultation meeting and the concerns raised is found in the docket (USEPA, 2000g). No significant concerns were raised regarding the LT1ESWTR.

J. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revoked Executive Order 13084 (also entitled Consultation and Coordination with Indian Tribal Governments.'') as of that date. However, EPA developed and proposed this final rule when Executive Order 13084 was in effect, and before the effective date of the consultation requirements of Executive Order 13175. Therefore, the consultation requirements of Executive Order 13084 apply to this rule.

Under Executive Order 13084, EPA could not issue a regulation that was not required by statute, that significantly or uniquely affected the communities of Indian Tribal governments, and that imposed substantial direct compliance costs on those communities, unless the Federal government provided the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consulted with those governments.

Executive Order 13084 required EPA to provide to the Office of Management and Budget, in a separately identified

section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 required EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

EPA has concluded that this rule will not significantly or uniquely affect communities of Indian Tribal governments, and will not impose substantial direct compliance costs on such communities. This rule will affect approximately 70 of the 700 total Tribal drinking water systems. Of these 70 systems, half are estimated to incur annualized compliance costs of less than $70 per year (0.003 percent of average annual revenue) and approximately 20 systems are estimated to incur annualized compliance costs of less than $850 per year (0.03 percent of average annual revenue). The remaining systems would incur an estimated annualized compliance costs of less than $13,000, or 0.6 percent of average annual revenue.

Nonetheless, EPA provided representatives of Tribal governments with several opportunities to become knowledgeable of the proposed rule and to provide meaningful and timely input in its development. EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998 as discussed in detail above in the UMRA and Federalism sections. To inform and involve the representatives of Tribal governments specifically, EPA presented the LT1ESWTR at three venues: The 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the EPA/Inter Tribal Council of Arizona, Inc. Tribal consultation meeting. Summaries of the meetings have been included in the public docket for this rulemaking. EPA's consultation, the nature of the Tribal concerns, and the position supporting the need for this rule are discussed in Section VI.C., which addresses compliance with UMRA.

Over 900 Tribal representatives from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At the first two conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1ESWTR. At the EPA/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. The presentation materials and meeting summary were sent to over 500 Tribes and Tribal organizations. Additionally, EPA contacted and invited each of the 12 Native American Drinking Water State Revolving Fund Advisors to attend the meetings described above.

During the comment period for today's final rule, the Agency held a public meeting in Washington, DC on April 14, 2000 which was announced in the **Federal Register**. Additionally, the proposed rule was either presented or discussed in nearly 50 meetings across the country. Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders, including Tribal representatives, requesting comment. EPA received 67 comments, one of which was from a Tribe. The Tribe indicated that they operated one surface water treatment plant and asked several clarifying questions with respect to optional monitoring and turbidity monitoring.

K. Likely Effect of Compliance With the LT1ESWTR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. This analysis can be found in the LT1ESWTR economic analysis (USEPA, 2001a). Overall water system capacity is defined in EPA guidance (USEPA, 1998j) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: Technical, managerial, and financial. Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements. Technical, managerial, and financial capacity can be assessed through key issues and questions, including:

Technical Capacity	
Source water adequacy	Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
Infrastructure adequacy	Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
Technical knowledge and implementation.	Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?
Managerial Capacity	
Ownership accountability	Are the system owner(s) clearly identified? Can they be held accountable for the system?
Staffing and organization	Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?

Effective external linkages	Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?
Financial Capacity	
Revenue sufficiency	Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
Credit worthiness	Is the system financially healthy? Does it have access to capital through public or private sources?
Fiscal management and controls	Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

Systems not making significant modifications to the treatment process to meet LT1ESWTR requirements are not expected to require significantly increased technical, financial, or managerial capacity. As noted previously, less than 1 percent of affected systems are expected to incur annual costs exceeding 1 percent of their annual revenue as described in Section VI.A. Accordingly, most systems are not expected to require significantly increased technical, financial, or managerial capacity. EPA does recognize that a very small number of facilities may realize some technical, managerial, or financial capacity concerns as a result of the rule. EPA works closely with organizations such as the National Rural Water Association and the American Water Works Association to develop technical and managerial tools, materials, and assistance to aid small systems. Additionally, the Safe Drinking Water Act, as amended in 1996, established the Drinking Water State Revolving Fund (DWSRF) to make funds available to drinking water systems to finance infrastructure improvements. The program emphasizes providing funds to small and disadvantaged communities and to programs that encourage pollution prevention as a tool for ensuring safe drinking water.

L. Plain Language

Executive Order 12866 requires each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. Of the several techniques typically utilized for writing readably, using a question and answer format, and using the word 'you' for whoever must comply, do the most to improve the look and sound of a regulation. Today's preamble and final rule use both of these principles and was developed using a plain language format, except in the case of modifications or additions to existing subparts of parts 141 and 142, where such a format would not fit into existing rule language. The Agency requested comment on this approach and several commenter's indicated that the proposal was clear and easy to understand.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 13, 2002.

N. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355, (May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The requirements in this rule would have a negligible impact upon the energy demands of some public water supply systems. Therefore, there is not a significant adverse effect on energy supply, distribution, or use.

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List of Subjects

40 CFR Parts 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding under the indicated heading:

a. By adding entries 141.530–141.536, 141.540–141.544, 141.550–141.553, 141.560–141.564 and 141.570–141.571 in numerical order.

b. By removing the entry 142.14(a)–(d)(7) and adding in its place a new entry § 142.14(b)–(d)(7).

c. By adding a new entry for 142.14(a) in numerical order.

d. By adding new entries for 142.16(g) and 142.16(j) in numerical order.

The additions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.530–141.536	2040–0229
141.540–141.544	2040–0229
141.550–141.553	2040–0229
141.560–141.564	2040–0229
141.570–141.571	2040–0229
* * * * *	
142.14(a)	2040–0229 2040–0090
142.14(b)–(d)(7)	2040–0090
* * * * *	
142.16(g)	2040–0229
142.16(j)	2040–0229

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by revising the definitions of ''Comprehensive performance evaluation'' (CPE), ''Ground water under the direct influence of surface water'' and ''Disinfection profile'' to read as follows:

§ 141.2 Definitions.

* * * * *

Comprehensive performance evaluation (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purpose of compliance with subparts P and T of this part, the comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

* * * * *

Disinfection profile is a summary of *Giardia lamblia* inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in § 141.172 (Disinfection profiling and benchmarking) in subpart P and §§ 141.530–141.536 (Disinfection profile) in subpart T of this part.

* * * * *

Ground water under the direct influence of surface water (GWUDI) means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium,* or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

5. Section 141.70 is amended by adding paragraph (e) to read as follows:

§ 141.70 General requirements.

* * * * *

(e) *Additional requirements for systems serving fewer than 10,000 people.* In addition to complying with requirements in this subpart, systems serving fewer than 10,000 people must also comply with the requirements in subpart T of this part.

6. Section 141.73 is amended by adding paragraph (a)(4) and revising paragraph (d) to read as follows:

§ 141.73 Filtration.

* * * * *

(a) * * *

(4) Beginning January 14, 2005, systems serving fewer than 10,000 people must meet the turbidity requirements in §§ 141.550 through 141.553.

* * * * *

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a) through (c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply. Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in § 141.173(b). Beginning January 14, 2005, systems serving fewer than 10,000 people must meet the requirements for other filtration technologies in § 141.550 through 141.553.

7. Section 141.153 is amended by revising the first sentence of paragraph (d)(4)(v)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(v) * * *

(C) When it is reported pursuant to § 141.73 or § 141.173 or § 141.551: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173, or § 141.551 for the filtration technology being used.

* * *

* * * * *

8. The heading to Subpart P is revised to read as follows:

Subpart P—Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People

* * * * *

9. Section 141.170 is amended by adding paragraph (d) to read as follows:

§ 141.170 General requirements.

* * * * *

(d) Subpart H systems that did not conduct optional monitoring under § 141.172 because they served fewer than 10,000 persons when such monitoring was required, but serve more than 10,000 persons prior to January 14, 2005 must comply with §§ 141.170, 141.171, 141.173, 141.174, and 141.175. These systems must also consult with the State to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice, as described in § 141.172(c)(1)(i) through (iv) must consult with the State prior to making such change.

10. Section 141.202 is amended in Table 1 by revising entry 6 to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

* * * * *

(a) * * *

TABLE 1 TO SEC. 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

*	*
(6) Violation of the Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR) or Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;	
*	*

* * * * *

11. Section 141.203 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

* * * * *

(b) * * *

(3) * * *

(ii) Violation of the SWTR, IESWTR or LT1ESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.

* * * * *

12. Appendix A to subpart Q is amended:

a. Under I.A. by revising entry 5.

b. Under I.A. by revising entry 7.

c. Adding a new entry 9.

d. Under I.G. by revising entry 10.

e. Revising endnote 6.

The additions and revisions read as follows:

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR): [3]				
* *	*	* *	*	* *
A. Microbiological Contaminants				
* *	*	* *	*	* *
5. Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level).	[6] 2,1	141.71(a)(2),141.71(c)(2)(i), 141.73(a)(2), 141.73 (b)(2), 141.73 (c)(2), 141.73(d), 141.173(a)(2), 141.173(b), 141.551(b).	3	141.74(a)(1), 141.74(b)(2), 141.74(c)(1), 141.174, 141.560(a)–(c), 141.561.
* *	*	* *	*	* *
7. Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. turbidity level (TT).	[7] 2	141.170–141.173, 141.500–141.553.	3	141.172, 141.174, 141.530–141.544, 141.560–141.564.
* *	*	* *	*	* *
9. Long Term 1 Enhanced Surface Water Treatment Rule violations.	2	141.500–141.553	3	141.530–141.544, 141.560–141.564.
* *	*	* *	*	* *
G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals. Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).[9]				
* *	*	* *	*	* *
10. Bench marking and disinfection profiling.	N/A	N/A	3	141.172 141.530–141.544.
* *	*	* *	*	* *

Appendix A–Endnotes:

[1] Violations and other situations not listed in this table (e.g., reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

[2] MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique

[3] The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

* * * * * * *

[6] Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under the Surface Water Treatment Rule (SWTR), the Interim Enhanced Surface Water Treatment Rule (IESWTR), or the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) are required to consult with the primacy agency within 24 hours after learning of the violation. Based on this consultation, the primacy agency may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the primacy agency in the 24-hour period, the violation is automatically elevated to Tier 1.

[7] Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63 FR 69477) (§§ 141.170—141.171, 141.173—141.174) become effective January 1, 2002 for the Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving at least 10,000 persons. However, § 141.172 has some requirements that become effective as early as April 16, 1999. The Surface Water Treatment Rule remains in effect for systems serving at least 10,000 persons even after 2002; the Interim Enhanced Surface Water Treatment Rule adds additional requirements and does not in many cases supercede the SWTR.

* * * * * * *

[9] Subpart H community and non-transient non-community systems serving ≥10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning January 1, 2002. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL begining January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

Appendix B—[Amended]

13. Appendix B to subpart Q is amended by:

a. Revising entry A.2c.

b. Revising heading B.

c. Revising entries B.3., B.4, B.5, B.6., and B.7.

d. Revising endnotes 4, 6 and 10.

e. Revising endnote 8.

The revisions read as follows:

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG [1], mg/L	MCL [2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR):			
A. Microbiological Contaminants			
* * *	*	*	* * *
2c. Turbidity (IESWTR TT and LT1ESWTR TT) [8].	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
* * *	*	*	* * *
B. Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) and the Filter Backwash Recycling Rule (FBRR) violations:			
* * *	*	*	* * *
3. Giardia lamblia (SWTR/IESWTR/LT1ESWTR)	Zero	TT [10]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
4. Viruses (SWTR/IESWTR/LT1ESWTR)			
5. Heterotrophic plate count (HPC) bacteria [9] (SWTR/IESWTR/LT1ESWTR)			
6. Legionella (SWTR/IESWTR/LT1ESWTR)			
7. Cryptosporidium (IESWTR/FBRR/LT1ESWTR)			

* * * * * * *

[1] MCLG—Maximum contaminant level goal.

[2] MCL—Maximum contaminant level.

[4] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. The MCL for the montly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 CFR 141.13).

[6] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. Systems subject to the Surface Water Treatment Rule (both filtered and unfiltered) may not exceed 5 NTU. In addition, in filtered systems, 95 percent of samples each month must not exceed 0.5 NTU in systems using conventional or direct filtration and must not exceed 1 NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the primacy agency.

[8] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR) and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency. For systems subject to the LT1ESWTR (systems serving fewer than 10,000 people, using surface water or ground water under the direct influence of surface water) that use conventional filtration or direct filtration, after January 14, 2005 the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the LT1ESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency.

[9] The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

[10] SWTR, IESWTR, and LT1ESWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

14. Part 141 is amended by adding a new subpart T to read as follows:

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

141.500 General requirements
141.501 Who is subject to the requirements of subpart T?
141.502 When must my system comply with these requirements?
141.503 What does subpart T require?

Finished Water Reservoirs

141.510 Is my system subject to the new finished water reservoir requirements?
141.511 What is required of new finished water reservoirs?

Additional Watershed Control Requirements for Unfiltered Systems

141.520 Is my system subject to the updated watershed control requirements?
141.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?
141.522 How does the State determine whether my system's watershed control requirements are adequate?

Disinfection Profile

141.530 What is a Disinfection Profile and who must develop one?
141.531 What criteria must a State use to determine that a profile is unnecessary?
141.532 How does my system develop a Disinfection Profile and when must it begin?
141.533 What data must my system collect to calculate a Disinfection Profile?
141.534 How does my system use this data to calculate an inactivation ratio?
141.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?
141.536 My system has developed an inactivation ratio; what must we do now?

Disinfection Benchmark

141.540 Who has to develop a Disinfection Benchmark?
141.541 What are significant changes to disinfection practice?
141.542 What must my system do if we are considering a significant change to disinfection practices?
141.543 How is the Disinfection Benchmark calculated?
141.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

Combined Filter Effluent Requirements

141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?
141.551 What strengthened combined filter effluent turbidity limits must my system meet?
141.552 My system consists of ''alternative filtration'' and is required to conduct a demonstration. What is required of my system and how does the State establish my turbidity limits?
141.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

Individual Filter Turbidity Requirements

141.560 Is my system subject to individual filter turbidity requirements?
141.561 What happens if my system's turbidity monitoring equipment fails?
141.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?
141.563 What follow-up action is my system required to take based on continuous turbidity monitoring?
141.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

Reporting and Recordkeeping Requirements

141.570 What does subpart T require that my system report to the State?
141.571 What records does subpart T require my system to keep?

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

§ 141.500 General requirements.

The requirements of this subpart constitute national primary drinking water regulations. These regulations establish requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under subpart H of this part. The regulations in this subpart establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia,* viruses, heterotrophic plate count bacteria, *Legionella, Cryptosporidium* and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) At least 99 percent (2 log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems; and

(b) Compliance with the profiling and benchmark requirements in §§ 141.530 through 141.544.

§ 141.501 Who is subject to the requirements of subpart T?

You are subject to these requirements if your system:

(a) Is a public water system;

(b) Uses surface water or GWUDI as a source; and

(c) Serves fewer than 10,000 persons.

§ 141.502 When must my system comply with these requirements?

You must comply with these requirements in this subpart beginning January 14, 2005 except where otherwise noted.

§ 141.503 What does subpart T require?

There are seven requirements of this subpart, and you must comply with all requirements that are applicable to your system. These requirements are:

(a) You must cover any finished water reservoir that you began to construct on or after March 15, 2002 as described in §§ 141.510 and 141.511;

(b) If your system is an unfiltered system, you must comply with the updated watershed control requirements described in §§ 141.520–141.522;

(c) If your system is a community or non-transient non-community water systems you must develop a disinfection profile as described in §§ 141.530–141.536;

(d) If your system is considering making a significant change to its disinfection practices, you must develop a disinfection benchmark and consult with the State for approval of the change as described in §§ 141.540–141.544;

(e) If your system is a filtered system, you must comply with the combined filter effluent requirements as described in §§ 141.550–141.553;

(f) If your system is a filtered system that uses conventional or direct filtration, you must comply with the individual filter turbidity requirements as described in §§ 141.560–141.564; and

(g) You must comply with the applicable reporting and recordkeeping requirements as described in §§ 141.570 and 141.571.

Finished Water Reservoirs

§ 141.510 Is my system subject to the new finished water reservoir requirements?

All subpart H systems which serve fewer than 10,000 are subject to this requirement.

§ 141.511 What is required of new finished water reservoirs?

If your system begins construction of a finished water reservoir on or after March 15, 2002 the reservoir must be covered. Finished water reservoirs for which your system began construction prior to March 15, 2002 are not subject to this requirement.

Additional Watershed Control Requirements for Unfiltered Systems

§ 141.520 Is my system subject to the updated watershed control requirements?

If you are a subpart H system serving fewer than 10,000 persons which does

not provide filtration, you must continue to comply with all of the filtration avoidance criteria in § 141.71, as well as the additional watershed control requirements in § 141.521.

§ 141.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?

Your system must take any additional steps necessary to minimize the potential for contamination by *Cryptosporidium* oocysts in the source water. Your system's watershed control program must, for *Cryptosporidium*:

(a) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(b) Monitor the occurrence of activities which may have an adverse effect on source water quality.

§ 141.522 How does the State determine whether my system's watershed control requirements are adequate?

During an onsite inspection conducted under the provisions of § 141.71(b)(3), the State must determine whether your watershed control program is adequate to limit potential contamination by *Cryptosporidium* oocysts. The adequacy of the program must be based on the comprehensiveness of the watershed review; the effectiveness of your program to monitor and control detrimental activities occurring in the watershed; and the extent to which your system has maximized land ownership and/or controlled land use within the watershed.

Disinfection Profile

§ 141.530 What is a Disinfection Profile and who must develop one?

A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. If you are a subpart H community or non-transient non-community water systems which serves fewer than 10,000 persons, your system must develop a disinfection profile unless your State determines that your system's profile is unnecessary. Your State may approve the use of a more representative data set for disinfection profiling than the data set required under §§ 141.532–141.536.

§ 141.531 What criteria must a State use to determine that a profile is unnecessary?

States may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system.

§ 141.532 How does my system develop a Disinfection Profile and when must it begin?

A disinfection profile consists of three steps:

(a) First, your system must collect data for several parameters from the plant as discussed in § 141.533 over the course of 12 months. If your system serves between 500 and 9,999 persons you must begin to collect data no later than July 1, 2003. If your system serves fewer than 500 persons you must begin to collect data no later than January 1, 2004.

(b) Second, your system must use this data to calculate weekly log inactivation as discussed in §§ 141.534 and 141.535; and

(c) Third, your system must use these weekly log inactivations to develop a disinfection profile as specified in § 141.536.

§ 141.533 What data must my system collect to calculate a Disinfection Profile?

Your system must monitor the following parameters to determine the total log inactivation using the analytical methods in § 141.74 (a), once per week on the same calendar day, over 12 consecutive months:

(a) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(b) If your system uses chlorine, the pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(c) The disinfectant contact time(s) (''T'') during peak hourly flow; and

(d) The residual disinfectant concentration(s) (''C'') of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

§ 141.534 How does my system use this data to calculate an inactivation ratio?

Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

If your system * * *	Your system must determine * * *
(a) Uses only one point of disinfectant application.	(1) One inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow or (2) Successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, your system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine ($3CTcalc/CT_{99.9}$).
(b) Uses more than one point of disinfectant application before the first customer.	The ($CTcalc/CT_{99.9}$) value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow using the procedure specified in paragraph (a)(2) of this section.

§ 141.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses chloramines, ozone, or chlorine dioxide for primary disinfection, you must also calculate the logs of inactivation for viruses and develop an additional disinfection profile for viruses using methods approved by the State.

§ 141.536 My system has developed an inactivation ratio; what must we do now?

Each log inactivation serves as a data point in your disinfection profile. Your system will have obtained 52 measurements (one for every week of the year). This will allow your system and the State the opportunity to evaluate how microbial inactivation varied over the course of the year by looking at all 52 measurements (your Disinfection Profile). Your system must retain the Disinfection Profile data in graphic form, such as a spreadsheet, which must be available for review by the State as part of a sanitary survey. Your system must use this data to calculate a benchmark if you are considering changes to disinfection practices.

Disinfection Benchmark

§ 141.540 Who has to develop a Disinfection Benchmark?

If you are a subpart H system required to develop a disinfection profile under

§§ 141.530 through 141.536, your system must develop a Disinfection Benchmark if you decide to make a significant change to your disinfection practice. Your system must consult with the State for approval before you can implement a significant disinfection practice change.

§ 141.541 What are significant changes to disinfection practice?

Significant changes to disinfection practice include:

(a) Changes to the point of disinfection;

(b) Changes to the disinfectant(s) used in the treatment plant;

(c) Changes to the disinfection process; or

(d) Any other modification identified by the State.

§ 141.542 What must my system do if we are considering a significant change to disinfection practices?

If your system is considering a significant change to its disinfection practice, your system must calculate a disinfection benchmark(s) as described in §§ 141.543 and 141.544 and provide the benchmark(s) to your State. Your system may only make a significant disinfection practice change after consulting with the State for approval. Your system must submit the following information to the State as part of the consultation and approval process:

(a) A description of the proposed change;

(b) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark;

(c) An analysis of how the proposed change will affect the current levels of disinfection; and

(d) Any additional information requested by the State.

§ 141.543 How is the Disinfection Benchmark calculated?

If your system is making a significant change to its disinfection practice, it must calculate a disinfection benchmark using the procedure specified in the following table.

To calculate a disinfection benchmark your system must perform the following steps
Step 1: Using the data your system collected to develop the Disinfection Profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.
Step 2: Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

§ 141.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses chloramines, ozone or chlorine dioxide for primary disinfection your system must calculate the disinfection benchmark from the data your system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under § 141.543. This viral benchmark must be calculated in the same manner used to calculate the *Giardia lamblia* disinfection benchmark in § 141.543.

Combined Filter Effluent Requirements

§ 141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?

All subpart H systems which serve populations fewer than 10,000, are required to filter, and utilize filtration other than slow sand filtration or diatomaceous earth filtration must meet the combined filter effluent turbidity requirements of §§ 141.551–141.553 . If your system uses slow sand or diatomaceous earth filtration you are not required to meet the combined filter effluent turbidity limits of subpart T, but you must continue to meet the combined filter effluent turbidity limits in § 141.73.

§ 141.551 What strengthened combined filter effluent turbidity limits must my system meet?

Your system must meet two strengthened combined filter effluent turbidity limits.

(a) The first combined filter effluent turbidity limit is a ''95th percentile'' turbidity limit that your system must meet in at least 95 percent of the turbidity measurements taken each month. Measurements must continue to be taken as described in § 141.74(a) and (c). Monthly reporting must be completed according to § 141.570. The following table describes the required limits for specific filtration technologies.

If your system consists of * * *	Your 95th percentile turbidity value is * * *
(1) Conventional Filtration or Direct Filtration	0.3 NTU.
(2) All other ''Alternative'' Filtration	A value determined by the State (no to exceed 1 NTU) based on the demonstration described in § 141.552.

(b) The second combined filter effluent turbidity limit is a ''maximum'' turbidity limit which your system may at no time exceed during the month. Measurements must continue to be taken as described in § 141.74(a) and (c). Monthly reporting must be completed according to § 141.570. The following table describes the required limits for specific filtration technologies.

If your system consists of * * *	Your maximum turbidity value is * * *
(1) Conventional Filtration or Direct Filtration	1 NTU.
(2) All other ''Alternative''	A value determined by the State (not to exceed 5 NTU) based on the demonstration as described in § 141.552.

§ 141.552 My system consists of ''alternative filtration'' and is required to conduct a demonstration—what is required of my system and how does the State establish my turbidity limits?

(a) If your system consists of alternative filtration(filtration other than slow sand filtration, diatomaceous earth filtration, conventional filtration, or direct filtration) you are required to conduct a demonstration (see tables in § 141.551). Your system must demonstrate to the State, using pilot plant studies or other means, that your system's filtration, in combination with disinfection treatment, consistently achieves:

(1) 99 percent removal of *Cryptosporidium* oocysts;

(2) 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts; and

(3) 99.99 percent removal and/or inactivation of viruses.

(b) [Reserved]

§ 141.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

If your system practices lime softening, you may acidify representative combined filter effluent turbidity samples prior to analysis using a protocol approved by the State.

Individual Filter Turbidity Requirements

§ 141.560 Is my system subject to individual filter turbidity requirements?

If your system is a subpart H system serving fewer than 10,000 people and utilizing conventional filtration or direct filtration, you must conduct continuous monitoring of turbidity for each individual filter at your system. The following requirements apply to continuous turbidity monitoring:

(a) Monitoring must be conducted using an approved method in § 141.74(a);

(b) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer;

(c) Results of turbidity monitoring must be recorded at least every 15 minutes;

(d) Monthly reporting must be completed according to § 141.570; and

(e) Records must be maintained according to § 141.571.

§ 141.561 What happens if my system's turbidity monitoring equipment fails?

If there is a failure in the continuous turbidity monitoring equipment, your system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. Your system has 14 days to resume continuous monitoring before a violation is incurred.

§ 141.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?

Yes, if your system only consists of two or fewer filters, you may conduct continuous monitoring of combined filter effluent turbidity in lieu of individual filter effluent turbidity monitoring. Continuous monitoring must meet the same requirements set forth in § 141.560(a) through (d) and § 141.561.

§ 141.563 What follow-up action is my system required to take based on continuous turbidity monitoring?

Follow-up action is required according to the following tables:

If * * *	Your system must * * *
(a) The turbidity of an individual filter (or the turbidity of combined filter effluent (CFE) for systems with 2 filters that monitor CFE in lieu of individual filters) exceeds 1.0 NTU in two consecutive recordings 15 minutes apart.	Report to the State by the 10th of the following month and include the filter number(s), corresponding date(s), turbidity value(s) which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s).

If a system was required to report to the State * * *	Your system must * * *
(b) For three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters).	Conduct a self-assessment of the filter(s) within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (c) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.
(c) For two months in a row and turbidity exceeded 2.0 BTU in 2 consecutive recordings 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters).	Arrange to have a comprehensive performance evaluation (CPE) conducted by the State or a third party approved by the State not later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE has been completed by the State or a third party approved by the State within the 12 prior months or the system and State are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the State no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

§ 141.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

If your system utilizes lime softening, you may apply to the State for alternative turbidity exceedance levels for the levels specified in the table in § 141.563. You must be able to demonstrate to the State that higher turbidity levels are due to lime carryover only, and not due to degraded filter performance.

Reporting and Recordkeeping Requirements

§ 141.570 What does subpart T require that my system report to the State?

This subpart T requires your system to report several items to the State. The following table describes the items which must be reported and the

frequency of reporting. Your system is required to report the information described in the following table, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of information to report	Frequency
(a) Combined Filter Effluent Requirements. (§§ 141.550–141.553)	(1) The total number of filtered water turbidity measurements taken during the month.	By the 10th of the following month.
	(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to your system's required 95th percentile limit.	By the 10th of the following month.
	(3) The date and value of any turbidity measurements taken during the month which exceed the maximum turbidity value for your filtration system.	By the 10th of the following month.
(b) Individual Turbidity Requirements. (§§ 141.560–141.564)	(1) That your system conducted individual filter turbidity monitoring during the month.	By the 10th of the following month.
	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, but only if 2 consecutive measurements exceeded 1.0 NTU.	By the 10th of the following month.
	(3) If a self-assessment is required, the date that it was triggered and the date that it was completed.	By the 10th of the following month (or 14 days after the self-assessment was triggered only if the self-assessment was triggered during the last four days of the month)
	(4) If a CPE is required, that the CPE is required and the date that it was triggered.	By the 10th of the following month.
	(5) Copy of completed CPE report	Within 120 days after the CPE was triggered.
(c) Disinfection Profiling (§§ 141.530–141.536)	(1) Results of optional monitoring which show TTHM levels <0.064 mg/l and HAA5 levels <0.048 mg/l (Only if your system wishes to forgo profiling) or that your system has begun disinfection profiling.	(i) For systems serving 500–9,999 by July 1, 2003; (ii) For systems serving fewer than 500 by January 1, 2004.
(d) Disinfection Benchmarking (§§ 141.540–141.544)	(1) A description of the proposed change in disinfection, your system's disinfection profile for Giardia lamblia (and, if necessary, viruses) and disinfection benchmark, and an analysis of how the proposed change will affect the current levels of disinfection.	Anytime your system is considering a significant change to its disinfection practice.

§ 141.571 What records does subpart T require my system to keep?

Your system must keep several types of records based on the requirements of subpart T, in addition to recordkeeping requirements under § 141.75. The following table describes the necessary records, the length of time these records must be kept, and for which requirement the records pertain. Your system is required to maintain records described in this table, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of necessary records	Duration of time records must be kept
(a) Individual Filter Turbidity Requirements (§§ 141.560–141.564)	Results of individual filter monitoring	At least 3 years.
(b) Disinfection Profiling (§§ 141.530–141.536)	Results of Profile (including raw data and analysis)	Indefinitely.
(c) Disinfection Benchmarking (§§ 141.540–141.544)	Benchmark (including raw data and analysis)	Indefinitely.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

15. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

16. Section 142.14 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(ii) introductory text, and (a)(7) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(3) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71, 141.73, 141.173 and 141.175, 141.550–141.553 and 141.560–141.564 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13 of this chapter.

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of §§ 141.75, 141.175, and 141.570, of this chapter must be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis

under provisions of part 141, subpart H, subpart P, or subpart T of this chapter, must be made in writing and kept by the State.

* * * * *

(7) Any decisions made pursuant to the provisions of part 141, subpart P or subpart T of this chapter.

(i) Records of systems consulting with the State concerning a modification to disinfection practice under §§ 141.170(d), 141.172(c), and 141.542 of this chapter, including the status of the consultation.

(ii) Records of decisions that a system using alternative filtration technologies, as allowed under §§ 141.173(b) and § 141.552 of this chapter, can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised. The State must provide a copy of the decision to the system.

(iii) Records of systems required to do filter self-assessment, CPE, or CCP under the requirements of §§ 141.175 and 141.563 of this chapter.

* * * * *

17. Section 142.16 is amended by revising paragraph (g) introductory text and adding paragraph (j) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(g) Requirements for States to adopt 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People, must contain the information specified in this paragraph:

* * * * *

(j) Requirements for States to adopt 40 CFR part 141, Subpart T Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart T Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have rules or other authority to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, the performance improvement phase of the Composite Correction Program (CCP). The State must determine whether a CTA must be conducted based on results of a CPE which indicate the potential for improved performance, and a finding by the State that the system is able to receive and implement technical assistance provided through the CTA. A CPE is a thorough review and analysis of a system's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. During the CTA phase, the system must identify and systematically address factors limiting performance. The CTA is a combination of utilizing CPE results as a basis for follow-up, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.*

(i) Section 141.530–141.536—How the State will approve a more representative data set for optional TTHM and HAA5 monitoring and profiling.

(ii) Section 141.536 of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, ozone, or chlorine dioxide for primary disinfection.

(iii) Section 141.542 of this chapter—How the State will consult with the system and approve significant changes to disinfection practices.

(iv) Section 141.552 of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

[FR Doc. 02–409 Filed 1–11–02; 8:45 am]

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Federal Register

Monday,
January 14, 2002

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[WH–FRL–7124–2]

RIN 2040–AD18

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is finalizing the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). The purposes of the LT1ESWTR are to improve control of microbial pathogens, specifically the protozoan *Cryptosporidium,* in drinking water and address risk trade-offs with disinfection byproducts. The rule will require systems to meet strengthened filtration requirements as well as to calculate levels of microbial inactivation to ensure that microbial protection is not jeopardized if systems make changes to comply with disinfection requirements of the Stage 1 Disinfection and Disinfection Byproducts Rule (DBPR). The LT1ESWTR applies to public water systems that use surface water or ground water under the direct influence of surface water and serve fewer than 10,000 persons. The LT1ESWTR builds upon the framework established for systems serving a population of 10,000 or more in the Interim Enhanced Surface Water Treatment Rule (IESWTR). This rule was proposed in combination with the Filter Backwash Recycling Rule (FBRR) in April 2000.

DATES: This regulation is effective February 13, 2002. As discussed in the supplementary information section and consistent with sections 1412(b)(10) and 1445 of SDWA, regulated entities must comply with this rule starting March 15, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. eastern time on January 14, 2002.

ADDRESSES: Public comments, the comment/response document, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket for this rulemaking (W–99–10, Final Long Term 1 Enhanced Surface Water Treatment Rule) are available for review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460 from 9 a.m. to 4 p.m., Eastern Time, Monday through Friday, excluding legal holidays. For access to docket materials or to schedule an appointment please call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact Tom Grubbs at 1200 Pennsylvania Avenue, NW., MC4607, Washington, DC 20460, (202) 564–5262. For general information contact the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the LT1ESWTR are public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI) and serve fewer than 10,000 persons. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	PWSs that use surface water or GWUDI.
State, Local, Tribal or Federal Governments.	PWSs that use surface water or GWUDI.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the LT1ESWTR. This table lists the types of entities that EPA is now aware could potentially be regulated by this rule. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of title 40 of the Code of Federal Regulations and applicability criteria in § 141.501 of today's final rule. If you have questions regarding the applicability of the LT1ESWTR to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

List of Abbreviations Used in This Document:

AWWA American Water Works Association
AWWSCo American Water Works Service Company
°C Degrees Celsius
CCP Composite Correction Program
CCR Consumer Confidence Report
CDC Centers for Disease Control
CFR Code of Federal Regulations
CFSII Continuing Survey of Food Intakes by Individuals
COI Cost of Illness
CPE Comprehensive Performance Evaluation
CTA Comprehensive Technical Assistance
DAF Dissolved Air Flotation
DBP Disinfection Byproducts
DBPR Disinfectants and Disinfection Byproduct Rule
EPA Environmental Protection Agency
ESWTR Enhanced Surface Water Treatment Rule
FACA Federal Advisory Committee Act
FBRR Filter Backwash Recycle Rule
FR Federal Register
gpm Gallons per Minute
GWUDI Ground Water Under Direct Influence of Surface Water
HAA5 Haloacetic Acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HRRCA Health Risk Reduction and Cost Analysis
ICR Information Collection Request
IESWTR Interim Enhanced Surface Water Treatment Rule
LT1ESWTR Long Term 1 Enhanced Surface Water Treatment Rule
MCLG Maximum Contaminant Level Goal
M-DBP Microbial and Disinfectants/Disinfection Byproducts
NDWAC National Drinking Water Advisory Council
NPDWR National Primary Drinking Water Regulation
NODA Notice of Data Availability
NTTAA National Technology Transfer and Advancement Act
NTU Nephelometric Turbidity Units
O&M Operation and Maintenance
OMB Office of Management and Budget
PBMS Performance-based Measurement System
PRA Paperwork Reduction Act
PWS Public Water System
PWSS Public Water Supply Supervision
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SAB Science Advisory Board
SBA Small Business Administration
SBAR Small Business Advocacy Review
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDWA Safe Drinking Water Act
SDWIS Safe Drinking Water Information System
SWTR Surface Water Treatment Rule
TTHM Total Trihalomethanes
UMRA Unfunded Mandates Reform Act
WTP Willingness to Pay

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I. Summary

A. Why Is EPA Promulgating the LT1ESWTR?

The Safe Drinking Water Act (SDWA) requires EPA to set enforceable standards to protect public health from contaminants that may occur in drinking water. As explained in more detail in the April 10, 2000 proposal for today's rule (65 FR 19046), EPA has determined that the presence of microbiological contaminants is a substantial health concern. If finished water supplies contain microbiological contaminants, disease outbreaks may result. Disease symptoms may include diarrhea, cramps, nausea, jaundice, headaches, and fatigue. EPA has set enforceable drinking water treatment techniques to reduce the risk of waterborne disease outbreaks. Treatment technologies such as filtration and disinfection can remove or inactivate microbiological contaminants.

Physical removal is critical to the control of *Cryptosporidium* because it is highly resistant to standard disinfection practices. Cryptosporidiosis, the infection caused by *Cryptosporidium*, may manifest itself as a severe infection that can last several weeks and may cause the death of individuals with compromised immune systems. In 1993, *Cryptosporidium* caused over 400,000 people in Milwaukee, WI to experience intestinal illness. More than 4,000 were hospitalized and at least 50 deaths were attributed to the cryptosporidiosis outbreak. There have also been cryptosporidiosis outbreaks in Nevada, Oregon, and Georgia over the past several years.

In 1990, the EPA Science Advisory Board (SAB) cited drinking water contamination as one of the most important environmental risks and indicated that disease causing microbial contaminants (i.e., bacteria, protozoa, and viruses) are probably the greatest remaining health risk management challenge for drinking water suppliers (USEPA/SAB, 1990). The LT1ESWTR addresses this challenge by improving the control of a wide range of microbial pathogens in public drinking water systems and, specifically addressing *Cryptosporidium* for the first time in systems serving fewer than 10,000 people.

B. What Is Cryptosporidium?

Cryptosporidium is a protozoan parasite found in humans, other mammals, birds, fish, and reptiles. It is common in the environment and widely found in surface water supplies (Rose, 1998; LeChevallier and Norton, 1995; Atherholt *et al.*, 1998; EPA, 2000a). In the infected animal, the parasite multiplies in the gastrointestinal tract. The animal then excretes oocysts of the parasite in its feces. These oocysts are tiny spore-like organisms 4 to 6 microns in diameter (too small to be seen without a microscope), which carry within them the infective sporozoites. The oocysts of *Cryptosporidium* are very resistant to adverse factors in the environment and can survive dormant for months in cool, dark conditions such as moist soil, or for up to a year in clean water. When ingested by another animal they can transmit the cryptosporidiosis disease and start a new cycle of infection. Cryptosporidiosis is primarily a waterborne disease, but has also been transmitted by consumption of contaminated food, unhygienic diaper changing practices (and other person-to-person contact), and contact with young farm animals.

Cryptosporidium oocysts are not easily killed by commonly-used disinfectants. They are relatively unaffected by chlorine and chloramines in the concentrations that are used for drinking water treatment. Oocyst infectivity appears to persist under normal temperatures, although oocysts may lose infectivity if sufficiently cooled or heated (USEPA, 2000a). Research indicates that oocysts may remain viable even after freezing (Fayer and Nerad, 1996).

C. What Are the Health Concerns Associated With Cryptosporidium?

When someone is infected with *Cryptosporidium*, they may contract cryptosporidiosis, a disease which can cause diarrhea, stomach cramps, nausea, loss of appetite, and a mild fever. *Cryptosporidium* has become recognized as one of the most common causes of waterborne disease (drinking and recreational) in humans in the United States. The parasite is found in every region of the United States and throughout the world (*www.cdc.gov/ncidod/dpd/parasites/cryptosporidiosis/factsht_cryptosporidiosis.htm*). The symptoms of cryptosporidiosis begin an average of seven days after infection. Persons with a normal, healthy immune system can expect their illness to last for two weeks or less, with constant or intermittent diarrhea. However, even after symptoms cease, an individual can still pass *Cryptosporidium* in the stool for up to two months, and may be a source of infection for others.

Cryptosporidiosis is not treatable with antibiotics, so prevention of infection is critical. People with weakened immune systems (those with HIV/AIDS, on cancer chemotherapy, or who have received organ transplants) will have cryptosporidiosis for a longer period of time, and it could become life-threatening. Young children, pregnant women, or the elderly infected with cryptosporidiosis can quickly become severely dehydrated.

Twelve waterborne cryptosporidiosis outbreaks have occurred at drinking water systems since 1984 (Craun, 1998; USEPA, 2000a). The largest of the known outbreaks occurred in Milwaukee and was responsible for over 400,000 illnesses and at least 50 deaths (Hoxie, *et al.*, 1997; MacKenzie *et al.*, 1994); other known outbreaks have occurred in smaller communities and have involved many fewer people. An incident such as a rainstorm that flushes many oocysts into the source water or causes a sanitary sewer overflow combined with a water treatment plant upset could allow a large pulse of oocysts to move past the multiple barriers of a water treatment plant.

D. Does This Regulation Apply to My Water System?

Today's final regulation applies to all small (serving less than 10,000 people) public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI).

E. How Is the EPA Regulating Cryptosporidium in the LT1ESWTR?

In the IESWTR (63 FR 69478), EPA established a maximum contaminant level goal (MCLG) of zero for *Cryptosporidium.* When establishing an MCLG, EPA must also establish either a corresponding Maximum Contaminant Level (MCL) or a treatment technique. In the IESWTR and in today's LT1ESWTR, the Agency chose to establish a treatment technique that relies on strengthening water treatment processes already in place. For filtered systems this means achieving at least 2-log (99 percent) removal of *Cryptosporidium* by meeting strengthened combined filter effluent turbidity limits as established by today's rule. For unfiltered systems it means maintaining and improving *Cryptosporidium* control under existing watershed control plans.

F. What Other Requirements Are Included in This Rule?

Today's final regulation includes several requirements.

—All surface water and GWUDI systems serving fewer than 10,000 people must meet the requirements for achieving a 2-log removal or control of *Cryptosporidium*;

—Conventional and direct filtration systems must comply with specific combined filter effluent turbidity requirements while alternative filtration systems (systems using filtration other than conventional filtration, direct filtration, slow sand filtration, or diatomaceous earth filtration), must demonstrate the ability to achieve 2-log removal of *Cryptosporidium* and comply with specific State-established combined filter effluent turbidity requirements;

—Conventional and direct filtration systems must continuously monitor the turbidity of individual filters and perform follow-up activities if this monitoring indicates a potential problem;

—Systems must develop a disinfection profile unless they can demonstrate that their TTHM and HAA5 disinfection byproduct (DBP) levels are less than 0.064 mg/L and 0.048 mg/L respectively;

—Systems considering a significant change to their disinfection practice must develop a disinfection inactivation benchmark of their existing level of microbial protection and consult with the State for approval prior to implementing the disinfection change;

—Finished water reservoirs for which construction begins after the effective date of today's rule must be covered; and

—Unfiltered systems must comply with updated watershed control requirements that add *Cryptosporidium* as a pathogen of concern.

G. How Will This Regulation Protect Public Health?

Today's rule for the first time establishes *Cryptosporidium* control requirements for small systems by requiring a minimum 2-log removal for *Cryptosporidium.* The rule also strengthens filter performance requirements to ensure 2-log *Cryptosporidium* removal, establishes individual filter monitoring to minimize contaminant pass-through and support improved performance, includes *Cryptosporidium* in the definition of GWUDI, and explicitly considers unfiltered system watershed control provisions. Today's rule also reflects a commitment to the importance of maintaining existing levels of microbial protection in public water systems as plants take steps to comply with newly applicable DBP standards. Systems considering significant changes to their disinfection practices must first evaluate current levels of *Giardia* inactivation (and virus inactivation if applicable) and consult with their State Primacy Agency for approval before implementing those changes to assure that current microbial protection is not significantly reduced. Thus, compliance with the provisions of today's rule will improve public health protection by reducing the risk of exposure to *Cryptosporidium* in small systems serving fewer than 10,000 people even as those systems begin to take steps to comply with related DBP standards.

II. Background

A. What Is the Statutory Authority for the LT1ESWTR?

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986, requires EPA to publish a maximum contaminant level goal (MCLG) for each contaminant which in the judgement of the EPA Administrator, may have an adverse effect on the health of persons, occurs in public water systems with a frequency and at a level of public health concern, and whose regulation would represent a meaningful public health risk reduction (Section 1412(b)(1)(A)). MCLGs are non-enforceable health goals to be set at a level at which no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety (Section 1412(b)(4)). The Act was again

amended in August 1996 (Public Law 104–83), resulting in the renumbering and augmentation of certain sections with additional statutory language. New sections were added establishing new drinking water requirements.

The 1986 Amendments to SDWA requires EPA to publish an enforceable National Primary Drinking Water Regulation (NPDWR) that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1) and 1412(7)(a)) at the same time it publishes an MCLG. EPA is authorized to promulgate a NPDWR that requires the use of a treatment technique in lieu of establishing an MCL, if the Agency finds that it is not economically or technologically feasible to ascertain the level of the contaminant. Today's rule relies upon the treatment technique of improved filter performance based on strengthened turbidity limits to control for Cryptosporidium because an analytical method suitable for finished water compliance purposes is currently not economically or technologically feasible. In accordance with a schedule established by Section 1412(b)(2)(C) of SDWA as added by the 1996 Amendments to SDWA, EPA is required to promulgate today's rule by November 2000.

B. What Is the Regulatory History for the LT1ESWTR?

In 1989, EPA promulgated the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989 (USEPA, 1989)) that set MCLGs of zero for *Giardia lamblia*, viruses, and *Legionella* and promulgated regulatory requirements for all PWSs using surface water or GWUDI. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses, and *Legionella*, as well as many other pathogenic organisms. Briefly, those requirements include (1) requirements for maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3-log (99.9 percent) for *Giardia* and 4-log (99.99 percent) for viruses; (3) combined filter effluent turbidity performance standard of 5 nephelometric turbidity units (NTU) as a maximum and 0.5 NTU at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems. Systems seeking to avoid filtration were required to meet avoidance criteria and obtain avoidance determinations from States by December 30, 1991, otherwise filtration must have been provided by June 29,1993. For systems properly avoiding filtration, later failures to meet avoidance criteria triggered a requirement that filtration be provided within 18 months.

The intention of the SWTR was to provide appropriate multiple barriers of treatment to control pathogen occurrence in finished drinking water. *Cryptosporidium,* however, was not addressed under the SWTR, because EPA lacked sufficient health, occurrence, and water treatment control data regarding this organism at the time of the rule's development. The IESWTR and today's final rule address these gaps in microbial protection.

In 1992, EPA initiated a negotiated rulemaking (Reg-Neg) to develop a disinfectants and disinfection byproducts rule. The Reg-Neg Committee consisting of a variety of stakeholder groups met from November 1992 through June 1993. As part of this effort, the Committee concluded that the SWTR needed to be revised to address the health risk of high densities of pathogens in poorer quality source waters than the SWTR addressed as well as the health risks of *Cryptosporidium*. The Committee recommended the development of three sets of rules: a two-staged Disinfectants/Disinfection Byproducts Rule (DBPR), an ''interim'' Enhanced Surface Water Treatment Rule (IESWTR), a ''long term'' Enhanced Surface Water Treatment Rule (LT1ESWTR), and an Information Collection Rule. The IESWTR was only to apply to those systems serving 10,000 or more persons. The Committee agreed that the ''long term'' Enhanced Surface Water Treatment Rule would be needed for systems serving fewer than 10,000 persons.

Congress legislatively affirmed this Microbial/Disinfection Byproduct (M-DBP) strategy as part of the 1996 SDWA Amendments. As part of those new Amendments, Congress also established a new schedule for EPA promulgation of these rules (which is the basis for the November 2000 schedule for today's rule). EPA established the M-DBP Advisory Committee under the Federal Advisory Committee Act (FACA) in 1997 to seek advice on how to proceed towards these deadlines in light of new information available since the 1993 negotiated rulemaking discussions. The Committee met five times in March through July 1997 to discuss issues related to the IESWTR and the Stage 1 DBPR. The Committee reached agreement in July of 1997 and its recommendations are embodied in an Agreement in Principle document dated July 15, 1997, which is also found in two Notices of Data Availability (NODA) (USEPA1997a,b). The major issues addressed in the Agreement in Principle were discussed in the NODA for the IESWTR (62 FR 59486, November 3, 1997) and Stage 1 DBPR (62 FR 59388, November 3, 1997).

On December 16, 1998, EPA promulgated the IESWTR (63 FR 69478), which applies to surface water and GWUDI systems serving 10,000 or more persons. The purposes of the IESWTR are to improve control of microbial pathogens (specifically Cryptosporidium) and to address risk trade-offs with DBPs. Key provisions established in the IESWTR include: (1) An MCLG of zero for *Cryptosporidium;* (2) a 2-log *Cryptosporidium* removal requirements for systems that filter; (3) strengthened combined filter effluent turbidity performance standards and individual filter turbidity provisions; (4) disinfection benchmarking provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new DBP standards; (5) inclusion of *Cryptosporidium* in the definition of GWUDI, as another pathogen that would indicate the presence of GWUDI, and in the watershed control requirements for unfiltered public water systems; (6) requirements for covers on new finished water reservoirs; and (7) sanitary surveys for all surface water and GWUDI systems regardless of size.

Today's rule is based in large part upon the data, research, and technical analysis that supported the major components included in the 1998 IESWTR. To that degree, it reflects the national interim microbial protection control strategy ratified by a wide range of experts and stakeholders as part of the 1997 M/DBP Agreement in Principle. However, as was discussed in the April 10, 2000 proposal, today's rule also is based on new small system information that became available since 1998 and, equally important, it also reflects a major commitment to significantly reduce small system compliance burdens wherever possible, while maintaining public health protection.

C. How Were Stakeholders Involved in the Development of the LT1ESWTR?

EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998 with two public meetings: one in Denver, Colorado and the other in Dallas, Texas (USEPA, 1999a,b). Building on these two public meetings, EPA has also held a number of additional meetings with stakeholders,

trade associations, environmental groups, and representatives of State and local elected officials. Of particular importance for this rule, given its focus on small systems, EPA received valuable input from small entity representatives as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel. The panel was initiated in April of 1998 and officially convened in August of 1998. Many of the panel's recommendations are reflected in today's rule.

EPA provided numerous opportunities for stakeholder and public involvement. In early June 1999, EPA mailed an informal draft of the LT1ESWTR preamble to the approximately 100 stakeholders who attended either of the public stakeholder meetings. Members of trade associations and the SBREFA panel also received the draft preamble. EPA received valuable suggestions and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. EPA proposed the LT1ESWTR on April 10, 2000. During the comment period, the Agency held a public meeting in Washington D.C. on April 14, 2000. Additionally, the proposed rule was presented to industry, State representatives, and the public in nearly 50 meetings across the US, including a May 30, 2000 meeting in Washington, D.C. with ten representatives of elected State and local officials (USEPA 2000g,h). Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders.

D. What Did the April 10, 2000 Proposal Contain?

The proposed rulemaking package, which is the basis for today's final rule, was entitled The Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Proposed Rule (USEPA, 2000b).

The proposed rule included two distinct sets of provisions: LT1ESWTR provisions and Filter Backwash Recycling Rule (FBRR) provisions. The Agency promulgated the final FBRR in a **Federal Register** announcement on June 8, 2001 (66 FR 31086), separate from today's final rule. The LT1ESWTR proposed rule provisions applied to surface and GWUDI systems serving fewer than 10,000 persons and included the following provisions:

—2-log removal of *Cryptosporidium*;
—Compliance with specific combined filter effluent turbidity requirements;
—Continuous turbidity monitoring for individual filters with follow-up activities if monitoring results indicated a potential problem;
—Development of a disinfection profile unless optional monitoring at a particular plant demonstrated TTHM and HAA5 levels less than 0.064 mg/L and 0.048 mg/L respectively;
—Development of a *Giardia* inactivation disinfection benchmark and consultation with the State for approval before making a significant change in disinfection practices;
—Mandatory covers for all newly constructed finished water reservoirs; and
—Unfiltered system compliance with updated watershed control requirements that add *Cryptosporidium* as a pathogen of concern.

III. Discussion of the Final Rule

A. What Level of Cryptosporidium Removal Does the LT1ESWTR Require?

1. What Does Today's Rule Require?

Today's final rule establishes a treatment technique requirement for 2-log removal of *Cryptosporidium* for surface water and GWUDI systems serving fewer than 10,000 persons. This requirement applies between a point where the raw water is not subject to contamination by surface water runoff and a point downstream before or at the first customer.

2. How Was This Requirement Developed?

As discussed previously in today's rule, *Cryptosporidium* is a microbiological contaminant that has caused several outbreaks of cryptosporidiosis and poses serious health risks. For these reasons, the Agency set forth to develop requirements to minimize risks associated with *Cryptosporidium* in drinking water. In the IESWTR, EPA established a MCLG of zero for *Cryptosporidium*. EPA decided to establish 2-log removal of *Cryptosporidium* as the accompanying treatment technique for this MCLG. This requirement is based on a number of treatment effectiveness studies that demonstrate the ability of well-operated conventional and direct filtration plants to achieve at least a 2-log removal of *Cryptosporidium* (Patania *et al.,* 1995; Nieminski and Ongerth, 1995; Ongerth and Pecoraro, 1995; LeChevallier and Norton, 1992; LeChevallier *et al.,* 1991; Foundation for Water Research, 1994; Kelly *et al.,* 1995; and West *et al.,* 1994). The information and data in these eight studies provide convincing evidence that conventional and direct filtration plants that employ coagulation, flocculation, sedimentation (in conventional filtration only), and filtration steps, have the ability to achieve a minimum of 2-log removal of *Cryptosporidium* when meeting specific turbidity limits. EPA has also provided data in the proposal for today's final rule that indicate the ability of slow sand filtration, diatomaceous earth filtration, and alternative filtration (membrane filtration, cartridge filtration, etc.) to achieve at least 2-log removal of *Cryptosporidium* (Jacangelo *et al.,* 1995; Drozd & Schartzbrod, 1997; Hirata & Hashimoto, 1998; Goodrich *et al.,* 1995; Collins *et al.,* 1996; Lykins *et al.,* 1994; Adham *et al.,* 1998; Shuler & Ghosh, 1991; Timms *et al.,* 1995; Shuler *et al.,* 1990; and Ongerth & Hutton, 1997). The Agency believes that the technological feasibility for 2-log removal is demonstrated for both large and small systems and therefore today's rule extends the 2-log *Cryptosporidium* removal requirement established for large and medium systems in the 1998 IESTWR to small systems serving fewer than 10,000 persons.

3. What Major Comments Were Received?

The majority of the commenters on the proposed rule agreed with the appropriateness of establishing a 2-log removal requirement for *Cryptosporidium*. A few commenters noted that small systems should not be required to meet the same *Cryptosporidium* log removal requirements as large systems. EPA disagrees. The technological feasibility of 2-log removal is well demonstrated (as shown in the studies discussed in the proposal for today's final rule) and the Agency believes that persons served by all sized systems should be afforded comparable levels of public health protection (i.e., the small systems subject to the LT1ESWTR should have the same MCLG, and the 2-log *Cryptosporidium* removal treatment technique as large systems subject to the IESWTR).

B. What Combined Filter Effluent Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule requires strengthened combined filter effluent performance for conventional filtration, direct filtration, and alternative filtration systems (systems using filtration technologies other than conventional filtration, direct filtration, diatomaceous earth filtration, or slow sand filtration) as the treatment technique for achieving a 2-log removal of *Cryptosporidium*. For conventional and direct filtration systems, the

turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU. Under today's rule, conventional and direct filtration plants meeting these filter performance requirements are presumed to achieve at least a 2-log removal of *Cryptosporidium*. Slow sand and diatomaceous earth filtration plants are presumed to achieve at least 2-log removal of *Cryptosporidium* if they continue to meet the existing filter performance requirements established in the SWTR. Systems using alternative filtration (i.e., membrane filtration, cartridge filtration, etc.) must demonstrate to the State that their system achieves 2-log removal of *Cryptosporidium*. The State will then establish appropriate turbidity limits to reflect this performance. At the end of each month, systems must report the total number of combined filter effluent turbidity measurements taken each month, as well as the number and percentage of turbidity measurements that exceeded their 95th percentile turbidity limit and the number of measurements that exceeded their maximum turbidity limit. Combined filter effluent turbidity measurements must be kept for at least three years.

2. How Was This Requirement Developed?

In establishing the 2-log removal as a treatment technique for *Cryptosporidium*, the Agency relied on the aforementioned studies to demonstrate the technological feasibility of establishing the 2-log removal. These studies demonstrated that specific treatment would achieve 2-log removal of *Cryptosporidium* when operated to achieve specific turbidity performance limits. For conventional and direct filtration systems, studies demonstrated that achieving a turbidity of 0.3 NTU 95 percent of the time and never exceeding 1 NTU would ensure at least 2-log removal of *Cryptosporidium*. For slow sand and diatomaceous earth filtration systems, the studies demonstrated that meeting existing SWTR turbidity limits would ensure at least 2-log removal of *Cryptosporidium*. Alternative filtration systems were shown to achieve at least 2-log removal of *Cryptosporidium* at a variety of turbidities based on the type of filtration and other site-specific characteristics. The requirements of today's final rule reflect the recommendations of the 1997 M-DBP Committee.

As part of the LT1ESWTR development process, EPA analyzed performance data from 211 small systems in 15 different States. That data indicated that a substantial number of small systems are presently meeting the tighter performance standards of today's rule. For example, 50 percent of the 211 systems are currently meeting 0.3 NTU 12 months out of the year. In addition, 93 percent of the 211 systems never exceeded the 1 NTU maximum 12 months out of the year. Therefore, EPA believes that the strengthened filter performance standards established for small systems in today's final rule are feasible and achievable.

3. What Major Comments Were Received?

The majority of the commenters on the proposal agreed with the appropriateness of the combined filter effluent requirements. Many commenters raised concerns with the proposal's reliance on turbidity as an indicator for demonstrating that membrane filtration meets the same *Cryptosporidium* removal requirements as conventional and direct filtration systems. Commenters indicated that although turbidity is the most prevalent form of water quality monitoring, establishing a 0.3 NTU 95th percentile limit and 1 NTU maximum limit would not be as appropriate an indicator of the performance of membranes than other parameters such as flux or membrane integrity. They noted that using turbidity was appropriate if site specific turbidity limits were utilized. At most facilities these limits would typically be much lower than 0.3 NTU. Additionally, commenters asserted that since the typical operational turbidities of membranes (< 0.05 NTU) were so much lower than those of conventional filtration, it would be inappropriate to require membranes to meet turbidity limits that were significantly higher than standard operating practices. In response, EPA notes that in the proposed rule, EPA allowed membrane systems to meet either conventional filtration or alternative filtration combined filter effluent requirements. After further evaluating existing studies and information provided by commenters, EPA agrees that other appropriate indicators may be used to determine the treatment efficiency of membrane filtration, and that given the different operational turbidities of conventional filtration and membrane filtration, different turbidity limits are appropriate. Therefore, today's final rule treats membrane filtration as an available alternative filtration technology, instead of requiring membranes to meet the same turbidity limits as conventional and direct filtration.

C. What Individual Filter Monitoring Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule establishes a requirement that all systems using surface water or GWUDI, serving fewer than 10,000 persons, and utilizing conventional or direct filtration must continuously monitor the individual filter turbidity for each filter used at the system. For purposes of this rule, continuous monitoring means at least every 15 minutes. Systems must keep the results of this monitoring for at least three years. Each month systems must report to the State that they have conducted individual filter turbidity monitoring, and are required to indicate the dates, filter number, and turbidities of any measurements that exceeded 1.0 NTU. Today's rule provides that systems with two or fewer filters may monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity monitoring. Based on this monitoring, if a system exceeds 1.0 NTU in two consecutive measurements the system must include the filter number, date, time and reason for the exceedance at the end of the month in its monthly filter performance report to the State. If this occurs three months in a row for the same filter, a system is required to conduct a self-assessment of the filter. If a self-assessment is required, it must take place within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month. The system must report to the State that the self-assessment was completed. A self-assessment must include at least the following components:

—Assessment of filter performance;
—Development of a filter profile;
—Identification and prioritization of factors limiting filter performance;
—Assessment of the applicability of corrections; and
—Preparation of a self-assessment report.

If a system exceeds 2.0 NTU (in two consecutive measurements 15 minutes apart) for two months in a row, the system must contact the State to arrange for the State or an approved third party to conduct a Comprehensive Performance Evaluation (CPE) not later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. The CPE must be completed and

submitted to the State no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

2. How Was This Requirement Developed?

Performance of individual filters within a plant is of paramount importance in preventing pathogen breakthrough. Two important concepts regarding individual filters underlie today's individual filter monitoring requirement. First, as discussed in more detail in the April 10, 2000 proposal, poor performance (and potential pathogen breakthrough) of one filter can be masked by optimal performance of the remaining filters, without exceeding combined filter effluent turbidity performance standards. Second, recent filter performance research demonstrates that individual filters are susceptible to turbidity spikes of short duration that may not be captured by four-hour combined filter effluent measurements. Several studies (Amirthatajah, 1988; Bucklin *et al.,* 1988; Cleasby 1990; Hall and Croll 1996; and McTigue *et al.,* 1998) have confirmed the frequency and magnitude of individual filter turbidity spikes. To address these spikes and the potential for masking, and provide system operators with information and advanced warning with regards to individual filter performance problems before they lead to treatment technique violations, the Agency proposed individual filter turbidity monitoring. EPA proposed one option and requested comment on two alternative approaches. The alternatives consisted of an approach identical to the IESWTR that entailed significantly more burden, and an approach that included 95th percentile and maximum triggers instead of a trigger based on two consecutive measurements. The proposed option has been revised in three minor ways. In today's rule:

—Systems with two or fewer filters may monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity (the proposal required all filters be monitored);

—Systems must schedule CPEs within 60 days and complete them within 120 days (the proposal required 30 and 90 days);

—A system has 14 days following a turbidimeter malfunction to resume continuous individual filter monitoring before a violation occurs (the proposal required 5 days).

3. What Major Comments Were Received?

The majority of the commenters on the proposal agreed with the appropriateness of the individual filter monitoring requirements. The Agency requested comment on a variety of issues to which commenters responded. Most commenters supported the modification that States be provided the opportunity to allow systems with two or fewer filters to monitor combined filter effluent turbidity continuously, in lieu of individual filter turbidity indicating that poor performance of one filter could not simply be masked by optimal performance of an additional filter. The Agency has included this modification in today's final rule because it reduces the burden on small systems while still providing continuous monitoring that can be used to indicate whether filters are performing poorly.

Several commenters supported a modification to lengthen CPE schedules by 30 days. The Agency has included this modification in today's final rule in order to provide States added flexibility in performing these activities. The extra 30 days will provide States the opportunity to marshal unique resources (specifically, employees trained in conducting CPEs) and prioritize the conduct of CPEs, when several systems trigger them during the same time period.

Several commenters indicated that allowing only five working days for an on-line turbidimeter to be off-line before a violation resulted would be inappropriate for small systems. Commenters indicated that smaller systems often do not have back-up units onsite and would be required to contact manufacturers and await shipping and installation which could easily exceed the five days. EPA agrees and has modified the requirement to allow systems serving fewer than 10,000 persons, 14 days to resume online monitoring prior to incurring a violation.

Several commenters noted that systems serving fewer than 10,000 persons should be subject to less frequent monitoring of individual filter effluent. EPA believes that continuous individual filter monitoring is feasible and assures improved performance of filtration systems. As explained in the proposal, continuous filter monitoring is necessary to identify short duration turbidity spikes which are likely to be missed with less frequent monitoring. This is true for systems of all sizes. Less frequent monitoring would not identify many turbidity spikes and accordingly would not provide a comparable level of public health protection as that of continuous monitoring required for large systems under the IESWTR. In fact, the actual frequency of individual filter monitoring has little effect on burden as much of the costs associated with monitoring are derived from the purchase of the necessary equipment and would be incurred regardless of the frequency. Reduced monitoring would represent reduced public health protection and the Agency firmly believes that the consumers of these small systems should be afforded a comparable level of public health protection as larger systems.

D. What Disinfection Profiling and Benchmarking Requirements Does the LT1ESWTR Contain?

1. What Does Today's Rule Require?

Today's final rule requires community and non-transient non-community systems that use surface water or GWUDI and serve fewer than 10,000 persons to develop a disinfection profile based on a 52 week period. Systems serving between 500 and 9,999 must begin profiling and notify the State to this effect by July 1, 2003. Systems serving fewer than 500 must begin profiling and notify the State to this effect by January 1, 2004. To conduct the profile, systems must:

—Monitor disinfectant residual concentration, water temperature in degrees Celsius, pH, and contact time during peak hourly flow once a week (on the same calendar day) during all months that the system is operational;

—Calculate Giardia lamblia inactivation for each of the 52 weeks; and

—Plot graphically, the 52 weekly inactivations.

Results of the profile must be kept indefinitely. EPA is developing guidance materials that provide detailed information on this procedure. A State may determine that a system's profile is unnecessary where a system submits TTHM and HAA5 data that:

—Is taken during the month of warmest water temperature (beginning no earlier than 1998);

—Is taken at the point of maximum residence time; and

—Reports levels of TTHM and HAA5 of less than 0.064 mg/L and 0.048 mg/L respectively.

Today's final rule also requires any system which developed a profile and which decides to make a significant change to their disinfection practice to determine their disinfection benchmark (the average microbial inactivation during the month with the lowest

inactivation), consult with the State for approval, and provide the following information during consultation:

—Description of the proposed change;
—Disinfection profile (and data used to develop profile); and
—Analysis of how the proposed change will affect the current levels of disinfection.

Results of the disinfection benchmark (including the raw data and analysis) must be kept indefinitely.

2. How Was This Requirement Developed?

The disinfection benchmarking requirements provide the necessary link between simultaneous compliance with microbial protection requirements of the IESWTR and LT1ESWTR and disinfection byproduct requirements of the DBPR. The requirements were established pursuant to the authority of Section 1445 of SDWA to ensure that systems would not jeopardize microbial protection when making changes in disinfection practices to comply with the DBPR.

During the 1997 M/DBP FACA deliberations, all participants agreed to the fundamental premise that new standards for control of DBPs must not lead to significant reductions in existing levels of microbial protection. This premise is reflected in the 1997 M–DBP Advisory Committee Agreement in Principle document. The Advisory Committee reached agreement on the use of a microbial profiling and benchmarking process, whereby a system and State, working together, could assure that there would not be a significant increase in microbial risk as a result of modifying disinfection practices to meet MCLs for TTHM and HAA5. The final IESWTR established the disinfection benchmark procedure to require large systems (serving 10,000 or more persons) that might be considering a significant change to their disinfection practice (defined as systems with TTHM or HAA5 concentrations at or above 80 percent of the respective MCLs (e.g., 0.064 mg/L TTHM or 0.048 mg/L HAA5)) to evaluate the impact on microbial risk. Under the IESWTR, large systems whose TTHM and/or HAA5 average levels exceeded the aforementioned values were required to develop a disinfection profile of microbial inactivation over the course of a year by calculating the daily level of *Giardia* inactivation. Those large systems required to develop a disinfection profile that also plan to make a significant change to disinfection practices were required to develop a ''benchmark'' of existing levels of *Giardia* microbial protection and to consult with the State prior to implementing the change.

In developing the disinfection benchmarking requirements of the LT1ESWTR, EPA used the IESWTR requirements as a starting point and, using significant input from stakeholders, modified the requirements to significantly reduce burden yet maintain a comparable level of public health protection. The April 10, 2000 proposal included several alternatives for establishing the microbial profiling and benchmarking process.

Of the four TTHM and HAA5 monitoring alternatives, the first was identical to the IESWTR, and included four quarters of monitoring at four points in the distribution system. The second alternative matched DBP compliance monitoring, requiring systems serving fewer than 500 to monitor once per year, and systems serving 500 or greater to monitor quarterly. A third alternative required only one sample taken at the point of maximum residence time for all systems. The fourth alternative (which was proposed) made TTHM and HAA5 monitoring optional. This alternative was chosen over the others, because it significantly reduces burden and the concern about ''early implementation,'' that is, the need for systems to comply with requirements of a rule before primacy states have adopted new conforming regulations, while still retaining the ability for systems and States to utilize monitoring data to demonstrate low TTHM and HAA5 levels, and therefore avoid profiling. Since this monitoring is no longer required to determine the applicability of systems to conduct profiles, the final LT1ESWTR refers to this monitoring as ''optional monitoring.'' The associated TTHM and HAA5 samples that must be conducted under this optional monitoring, are described in section 141.531. Of the four profiling alternatives, the first was identical to the IESWTR, requiring daily profiling for a year. The second alternative did not require profiling. The third alternative, which was proposed, required weekly profiling for a year. The fourth alternative required daily profiling during a single month. The Agency proposed weekly profiling over the course of a full year because it significantly reduces burden associated with conducting profiling (as compared to the first alternative), but still provides information on the seasonal variation associated with microbial inactivation, and develops an accurate microbial benchmark as systems moved to comply with the Stage 1 DBPR. The second and fourth profiling alternatives would not provide such information. The Agency has revised the proposed option in one minor way. In today's rule:

—Systems serving between 500 and 9,999 persons must begin weekly profiling no later than July 1, 2003, and systems serving fewer than 500 persons must begin weekly profiling no later than January 1, 2004 (the proposal required all systems to begin profiling no later than January 7, 2003).

3. What Major Comments Were Received?

The Agency received significant comment on the disinfection benchmarking provisions of the proposed rule. Commenters both supported and opposed the proposed ''optional'' TTHM and HAA5 monitoring. Several commenters argued that EPA should not require systems or states to undertake activities, even optional monitoring, before three years from the date a rule is promulgated because it would result in early implementation of the rule. While the Agency agrees that to the extent possible, implementation should be minimized in the first three years after the promulgation of a national primary drinking water regulation, as required by Section 1412(b)(10) of SDWA, the Agency continues to believe that allowing systems to conduct optional monitoring prior to three years after promulgation is appropriate and authorized under section 1445 of SDWA.

Several commenters raised ''early implementation'' concerns with profiling as well, and suggested profiling should take place only after using the first round of DBP monitoring in 2004 as optional monitoring for profiling activities. The Agency does agree, that to the extent possible, early implementation should be minimized in the first two years after the promulgation of the rule. However, the Agency believes that developing a microbial profile and benchmark prior to compliance monitoring under the Stage 1 DBPR is key to ensuring that systems do not jeopardize existing microbial protection when making changes to their disinfection practices to comply with the Stage 1 DBPR. Consequently, today's final rule requires systems serving fewer than 500 persons to begin profiling in January 2004, while systems serving greater than 500 to 9,999 persons are required to begin profiling in July 2003.

Other commenters believed that the proposed requirement represented burden reduction for small systems and

States while still achieving the goals of optional monitoring and profiling as developed by the 1997 FACA and EPA. Additionally, commenters noted that EPA should provide States and systems the ability to use more representative data if available (i.e., allowing systems to average over several quarters of data similar to the IESWTR requirements). EPA agrees that systems and States should be allowed the opportunity to use more representative samples, and today's final rule affords States the opportunity to allow more representative data for optional monitoring and profiling.

E. How Does the Definition of Ground Water Under the Direct Influence of Surface Water Change?

1. What Does Today's Rule Require?

Today's final rule modifies the definition of ground water under the direct influence of surface water (GWUDI) to include *Cryptosporidium*, as another pathogen that would indicate the presence of GWUDI, for all PWSs.

2. How Was This Requirement Developed?

Although ground water is typically protected from microbial contaminants that are characteristic of surface water supplies, some ground water systems are susceptible to microbial contamination from surface water. Ground water that exhibits physical water quality indicators that closely correlate with nearby surface water and which contain surface water indicator organisms is ''under the influence,'' of that surface water. In order to protect customers of such systems from illnesses resulting from exposure to Giardia and other microbial pathogens, the Agency addressed this issue during development of the 1989 SWTR. The final SWTR requires that systems with source water found to be GWUDI are subject to the filtration and disinfection requirements of Section 141 subpart H.

During development of today's final rule, the Agency proposed to modify the definition of GWUDI to include *Cryptosporidium*, as another pathogen that would indicate the presence of GWUDI. This is consistent with the approach taken by the Agency in the IESWTR and is further supported by recently available data indicating *Cryptosporidium* occurrence in 21 public water system wells (Hancock et al., 1998). As a result, EPA believes it appropriate and necessary to include *Cryptosporidium* in the definition of GWUDI for systems serving fewer than 10,000 persons in today's rule.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of modifying the definition of GWUDI to include *Cryptosporidium* for all PWSs. Today's final rule reflects the GWUDI definition as proposed.

F. What Additional Requirements Does the LT1ESWTR Contain for Unfiltered Systems?

1. What Does Today's Rule Require?

Today's rule modifies the requirements for surface water or GWUDI systems serving fewer than 10,000 persons that do not provide filtration by including *Cryptosporidium* in the watershed control provisions everywhere *Giardia lamblia* is mentioned.

2. How Was This Requirement Developed?

Watershed control requirements were initially established in 1989 as part of the SWTR. The SWTR contains specific conditions that a system must meet in order to avoid filtration. These conditions include good source water quality disinfection requirements, periodic on-site inspections, the absence of waterborne disease outbreaks, compliance with the Total Coliform Rule, and a watershed control program. The SWTR requires that the watershed control program must be maintained specifically to minimize the potential for contamination by *Giardia lamblia* cysts and viruses in the source water.

During development of today's rule, the Agency proposed that *Cryptosporidium* should also be included as a focus in watershed program for unfiltered systems. For the same public health reasons explained in detail as part of the April 10, 2000 proposal and outlined earlier regarding the risks associated with exposure to *Cryptosporidium,* the Agency believes it is important that watershed control requirements for unfiltered systems be revised to include *Cryptosporidium.* This is particularly important since such systems do not have the additional treatment barrier provided by filtration to protect against possible pass-through of *Cryptosporidium* into the distribution system.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of including *Cryptosporidium* in the watershed control program requirements for unfiltered systems. No substantive changes were made to this provision between proposal and today's final rule.

G. What Does the LT1ESWTR Require for Finished Water Reservoirs

1. What Does Today's Rule Require?

Today's final rule requires that all finished water reservoirs, holding tanks, or storage water facilities for finished water at systems serving fewer than 10,000 persons, for which construction begins after March 15, 2002 must be covered.

2. How Was This Requirement Developed?

Open finished water reservoirs, holding tanks, and storage tanks are utilized by PWSs throughout the country. Because these reservoirs are open to the environment and outside influences, they can be subject to the reintroduction of contaminants that the treatment plant was designed to remove. Existing EPA guidelines recommend that all finished water reservoirs and storage tanks be covered (USEPA, 1991). Additionally, many States currently require that finished water storage be covered, and the American Water Works Association (AWWA) has issued a policy statement strongly supporting the covering of reservoirs that store potable water (AWWA, 1983). In the July 29, 1994 IESWTR proposal (59 FR 38832), the Agency requested comment on whether to issue regulations requiring systems to cover finished water storage. Most commenters supported either Federal or State requirements, with some suggesting requirements should only apply to newly constructed reservoirs. In the final IESWTR, the Agency required systems using surface water and GWUDI and serving 10,000 persons or more to cover any newly constructed finished water reservoirs, holding tanks, or storage tanks. Through discussions with stakeholders and evaluations of available information, the Agency is unaware of any newly constructed uncovered finished water reservoirs at small systems since discussions with stakeholders regarding the LT1ESWTR began in 1998. The Agency is furthermore unaware of any future plans of small systems to construct uncovered finished water reservoirs. In fact the drinking water industry (regulators, consultants, and industry groups) have discouraged the construction of new uncovered reservoirs for many years. Furthermore, creating a prohibition on newly constructed uncovered finished water reservoirs would not affect current unfinished water reservoirs or even any system, which, despite the industry

standard of constructing only covered finished water reservoirs, may have already commenced construction on an uncovered finished water reservoir unbeknownst to the Agency or stakeholders which provided input on the rule. Therefore, in accordance with Section 1412(b)(10) of SDWA, the Agency has determined it is practicable to require as part of today's rule that systems serving fewer than 10,000 people provide covers for all finished water reservoirs, holding tanks, or storage reservoirs constructed after March 15, 2002.

3. What Major Comments Were Received?

Commenters agreed with the appropriateness of requiring that newly constructed finished water storage be covered. Several States noted that they currently require that all finished water reservoirs be covered. No substantive changes were made to this provision between proposal and today's final rule.

H. What Is the Compliance Schedule for the LT1ESWTR?

1. When Must My System Comply With Each of the Requirements of the Rule?

Each of the components of the final LT1ESWTR has a specific compliance date. The following table lists each requirement, along with the appropriate **Federal Register** citation and the compliance date:

Rule requirements	FR citation	Compliance date
Cover new finished water reservoirs	§ 141.511	March 15, 2002.
Comply with updated watershed control requirements (unfiltered PWSs).	§§ 141.520, 141.521 & 141.522	January 14, 2005.
Begin Developing Disinfection Profile	§§ 141.530–141.536	July 1, 2003 for systems serving between 500 and 9,999 persons and January 1, 2004 for systems serving fewer than 500 persons.
Complete the Disinfection Profile	§§ 141.530–141.536	July 1, 2004 for systems serving between 500 and 9,999 persons and January 1, 2005 for systems serving fewer than 500 persons.
Combined Filter Effluent Turbidity Limits	§§ 141.550, 141.551, 141.552, & 141.553.	January 11, 2005.
Individual Filter Turbidity Monitoring	§§ 141.560, 141.561, 141.562, 141.563, 141.564.	January 11, 2005.

2. What Major Comments Were Received?

Many commenters noted that they would not support requirements that would take place prior to two years after the promulgation of today's final rule. Several others recommended requiring that no portions of the rule should take effect until three years after the date of promulgation. The Agency does agree that to the extent possible, implementation should be minimized in the first two years after the promulgation of the rule. However, today's final rule requires systems serving fewer than 500 persons to begin profiling in January 2004, while systems serving greater than 500 to 9,999 persons are required to begin profiling in July 2003. This would allow time for States to work with systems, yet still provide profiling data prior to compliance sampling under the Stage 1 DBPR.

I. What Public Notification and Consumer Confidence Report Requirements Are Contained in the LT1ESWTR?

Today's final rule modifies the Public Notification (PN) requirements found in Appendix A and B of subpart Q of Part 141 to include public notification requirements for systems subject to the LT1ESWTR that are consistent with those for systems subject to the IESWTR.

Today's rule does not specifically modify the Consumer Confidence Report (CCR) Requirements found in subpart O of Part 141. However, consumer confidence reports must contain any violations of treatment techniques or requirements of NPDWRs as specified in § 141.153(d)(6) and § 141.153(f). This includes any such violations of the LT1ESWTR.

Updated CCR and PN appendices can be found on the Agency's Web site at *http://www/epa.gov/safewater/tables.html*.

IV. State Implementation

A. What Special State Primacy Requirements does the LT1ESWTR Contain?

In addition to adopting drinking water regulations at least as stringent as the Federal regulations of the LT1ESWTR, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA. This information advises the regulated community of State requirements and assists EPA in its oversight of State programs.

Under the final LT1ESWTR, there are several special primacy requirements that a State's application must include:

—Description of how the State will consult with the system and approve modifications to disinfection practices;

—Description of how the State will approve a more representative data set for optional monitoring and profiling under §§ 141.530–141.536.

—Description of how existing rules, adoption of appropriate rules or other authority under § 142.16(i)(1) require systems to participate in a Comprehensive Technical Assistance (CTA) activity, and the performance improvement phase of the Composite Correction Program (CCP);

—Description of how the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, chlorine dioxide, or ozone for primary disinfection; and

—For alternative filtration technologies (filtration other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration), a description of how the State will determine under § 142.16(i)(2)(iv), that a PWS may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with the disinfection treatment that meets the requirements of subpart T of this title, consistently achieves 3-log (99.9 percent) removal and/or inactivation of *Giardia lamblia* cysts and 4-log (99.99 percent) removal and/or inactivation of viruses, and 2-log (99 percent) removal of *Cryptosporidium* oocysts; and a description of how, for the

system that makes this demonstration, the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time.

B. What State Recordkeeping Requirements Does the LT1ESWTR Contain?

Today's rule includes changes to the existing recordkeeping provisions to implement the requirements in today's final rule. States must maintain records of the following:

(1) Records of turbidity measurements;

(2) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness;

(3) Decisions made on a system-by-system basis and case-by-case basis under provisions of section 141, subpart H or subpart P or subpart T;

(4) Records of systems consulting with the State concerning a significant modification to their disinfection practice (including the status of the consultation);

(5) Records of decisions that a system using alternative filtration technologies can consistently achieve a 2-log (99 percent) removal of *Cryptosporidium* oocysts, as well as the required levels of removal and/or inactivation of Giardia and viruses for systems using alternative filtration technologies, including State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised and the State must provide a copy of the decision to the system, and;

(6) Records of those systems required to perform filter self-assessments, CPE or CCP.

C. What State Reporting Requirements Does the LT1ESWTR Contain?

Currently States must report information to EPA under section 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. There are no additional requirements under this rule, but States are required to report violations, variances and exemptions, and enforcement actions related to this rule.

D. How Must a State Obtain Interim Primacy for the LT1ESWTR?

To maintain primacy for the Public Water Supply Supervision (PWSS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's final rule. A State must submit a request for approval of program revisions that adopt the revised MCL or treatment technique and implement regulations within two years of promulgation, unless EPA approves an extension per § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

V. Economic Analysis (Health Risk Reduction and Cost Analysis)

This section summarizes the Health Risk Reduction and Cost Analysis (HRRCA) in support of the LT1ESWTR as required by section1412(b)(3)(C) of the 1996 SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the LT1ESWTR. EPA has prepared an economic analysis to comply with the requirements of this order and the SDWA Health Risk Reduction and Cost Analysis (USEPA, 2001a). The final economic analysis has been published on the Agency's Web site, and can be found at *http://www.epa.gov/safewater/lt1eswtr*. The analysis can also be found in the docket for this rulemaking.

EPA has estimated the total annualized cost for implementing the LT1ESWTR and analyzed the total benefits that result from the rule. Total annual costs for the rule are $39.5 million, in 1999 dollars, using three percent discount rate [$44.8 million using a seven percent discount rate]. The cost estimate includes capital costs for treatment changes and start-up and annual labor costs for monitoring and reporting activities. More detailed information, including the basis for these estimates and alternate cost estimates using different cost of capital assumptions are described in the LT1ESWTR economic analysis (USEPA, 2001a). Combining the value of illness and mortalities avoided, the estimate of the total quantified annual benefits of the LT1ESWTR range from $18.9 million to $90.9 million. However, this range does not incorporate many of the sources of uncertainty related to quantifying benefits, including many benefits the Agency was unable to evaluate. Accordingly, incorporating additional uncertainties would necessarily increase the size of the range. For example, the number of avoided cases of cryptosporidiosis might be higher or lower than the number reflected in this range. More detailed information, including the basis for these estimates, are described in the LT1ESWTR economic analysis (USEPA, 2001a).

A. What Are the Costs of the LT1ESWTR?

In estimating the costs of today's final rule, the Agency considered impacts on PWSs and on States (including territories and EPA implementation in non-primacy States). The LT1ESWTR will result in increased costs to public water systems for implementing the components of today's final rule. States will also incur implementation costs. EPA estimates that the annualized cost of today's final rule will be $39.5 million using a three percent discount rate ($44.8 million using a seven percent discount rate).

Approximately 84 percent ($33.1 million using a 3 percent discount rate and $38.2 million using a 7 percent discount rate) of the rule's total annual costs are imposed on drinking water utilities. States incur the remaining 16 percent ($6.4 million using 3 percent and $6.6 million using 7 percent) of the LT1ESWTR's total annual cost. The turbidity provisions, which include treatment changes, monitoring, and reporting, account for the largest portion of the total rule costs ($37.7 million using 3 percent and $42.7 million using 7 percent). Systems will incur most of the turbidity provision costs and this is discussed in more detail in the next section. The national estimate of annual system costs is based on estimates of system-level costs for the rule and estimates of the number of systems expected to incur each type of cost. Total capital costs for the LT1ESWTR (non-annualized) is $173.6 million.

Turbidity Provision Costs—The turbidity provisions are estimated to cost both public drinking water systems and States approximately $37.7 million annually using a three percent discount rate ($42.7 million using 7 percent). However, the majority of these costs will be borne by the systems and are the result of treatment changes to meet the 0.3 NTU turbidity standard as well as the cost for some systems to purchase turbidimeters in order to meet the monitoring requirements of this rule. The Agency estimates that 2,207 systems will modify their water treatment in response to this rule provision while 2,327 conventional and direct filtration systems will need to install turbidimeters. In addition to the capital costs associated with this rule

provision there will also be increases in operation and maintenance (O&M) costs. These combined capital and O&M costs have an estimated cost to systems of $27.1 million annually using a 3 percent discount rate ($31.8 million using a 7 percent discount rate). The O&M expenditures account for 59 percent of the $27.1 million using a 3 percent discount rate ($31.8 million using a 7 percent discount rate) while the remaining 41 percent represents annualized capital costs. In addition to the turbidity treatment costs, turbidity monitoring costs apply to all small surface water or GWUDI systems using conventional or direct filtration methods. There are an estimated 5,817 systems that fall under this criterion. The annualized individual filter turbidity monitoring cost to PWSs is approximately $4.5 million using a 3 percent discount rate ($4.7 million using 7 percent). In addition to the turbidity treatment and monitoring costs, individual filter turbidity exceedance reporting is estimated to cost systems $0.6 million annually (using either a 3 percent or 7 percent discount rate).

The Agency estimated that the total State cost for the turbidity provision (monitoring and exceptions) is $6.1 million annually (using either a 3 percent or 7 percent discount rate), with start-up and monitoring comprising of 81 percent of these annual costs ($4.9 million annually using either a 3 percent or 7 percent discount rate). The remaining $1.2 million (using either a 3 percent or 7 percent discount rate) in annual costs includes the costs for States to review the individual filter turbidity exceedance reports and individual filter self-assessment costs.

Disinfection Benchmarking Costs—The disinfection benchmarking provision involves three components: benchmarking, profiling, and optional monitoring. The start-up costs for this provision are estimated to cost systems $2.9 million ($0.2 million annualized using a three percent discount rate and $0.3 million using a seven percent discount rate). Disinfection benchmarking and profiling are estimated to cost systems approximately $0.4 million annually using a 3 percent discount rate ($0.5 million using 7 percent). TTHM and HAA5 monitoring is optional and estimated to cost $0.3 million annually using a 3 percent discount rate ($0.4 million using a 7 percent discount rate). State disinfection benchmarking annualized costs are estimated to be $0.4 million using a 3 percent discount rate ($0.5 million using a 7 percent discount rate). This estimate includes start-up, compliance tracking/recordkeeping, and consultation costs.

Covered Finished Water Reservoir Provision Costs—The LT1ESWTR requires that small systems cover all newly constructed finished water reservoirs, holding tanks, or other storage facilities for finished water. Total annual costs, including annualized capital costs and one year of O&M costs are expected to be $0.8 million (using either a 3 percent or 7 percent discount rate) for this provision. This estimate is calculated from a projected construction rate of new reservoirs and unit cost assumptions for covering new finished water reservoirs. Also, the Agency believes that this is an overestimate since there may be additional States that currently require finished water requirement.

Although EPA has estimated the cost of all the rule's components on drinking water systems and States, there are some costs that the Agency did not quantify. These non-quantifiable costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA did not estimate a cost for systems to acquire land if they needed to build a treatment facility or significantly expand their current facility because the need for and cost of land is highly system specific. Additionally, if the cost for land was prohibitive, an alternative compliance option may be available (such as connecting to another source). Once again, the Agency has not quantified costs for this scenario due to the high degree of site specificity. However, based on evaluations of Comprehensive Performance Evaluations (CPEs), EPA believes that most systems possess more than adequate property to construct new facilities.

In addition, other LT1ESWTR provisions may affect some systems but the Agency was not able to quantify these costs. These non-quantified costs include those for systems that incur incremental costs increases as a result of including *Cryptosporidium* in the definition of GWUDI and also by including *Cryptosporidium* in the watershed control requirements for unfiltered systems. The Agency lacked data on the number of systems potentially affected by these two provisions and was therefore, unable to estimate their costs. By including *Cryptosporidium* in the definition, more ground water systems may be determined to be under the direct influence of surface water resulting in additional cost because these systems must comply with the 1989 Surface Water Treatment Rule and today's rule. EPA also did not estimate the costs for unfiltered systems to control *Cryptosporidium* in their watersheds. These systems already control for other pathogens from similar sources as *Cryptosporidium* so it is likely that this provision will have a relatively minor impact.

B. What Are the Household Costs of the LT1ESWTR?

The mean annual cost per household is $6.24 and the cost per household is less than $15 for 90 percent of 6.3 million households potentially affected by today's final rule. Of the remaining households, nine percent will experience a range of annual costs from $15 to $120 ($10/month), while only one percent of households are estimated to experience annual costs exceeding $120.

As indicated in the economic analysis supporting today's final rule, per-household costs exceed $240/year for approximately 5,600 households out of the 6.3 million households potentially impacted by the LT1ESWTR. However, this analysis likely overestimates costs for most of these households, allowing that systems might choose to incur costs with up to 28 separate treatment changes when in fact it is likely to be more cost-effective to install a new treatment system. (This can be thought of as building an automobile piece by piece from an auto parts store compared to buying one at a dealership.) The aforementioned 5,600 households are associated with the end of the cost distribution where systems undertake an unrealistically large number of treatment changes.

C. What Are the Benefits of the LT1ESWTR?

The primary benefits of today's final rule come from reductions in the risks of microbial illness from drinking water. In particular, LT1ESWTR focuses on reducing the risk associated with disinfection resistant pathogens, such as *Cryptosporidium.* Exposure to other pathogenic protozoa, such as *Giardia,* or other waterborne bacteria, viral pathogens, and other emerging pathogens are likely to be reduced by the provisions of this rule as well, but are not quantified. In addition, LT1ESWTR produces non-quantifiable benefits associated with the risk reductions that result from the uncovered reservoir provision, including *Cryptosporidium* in GWUDI definition, and including *Cryptosporidium* in watershed requirements for unfiltered systems. Non-quantifiable benefits also include reducing the risks to sensitive subpopulations and the likelihood of

incurring costs associated with outbreaks.

1. Quantifiable Health Benefits

The quantified benefits from this rule are based solely on the reductions in the risk of cryptosporidiosis that result from the turbidity provision. As a result of data limitation, this analysis only addresses endemic illness and not illness that results from epidemic disease outbreaks. *Cryptosporidiosis* is an infection caused by *Cryptosporidium* which is an acute, self-limiting illness lasting 7 to 14 days, with symptoms that include diarrhea, abdominal cramping, nausea, vomiting and fever (Juranek, 1995). The monetized value of an avoided case of cryptosporidiosis is estimated to range from $796 to $1,411 per case based on a cost-of-illness methodology (Harrington et al., 1985; USEPA 2001a). The high end of the range includes losses for medical costs, work time, productivity, and leisure time. However, the low end of the range only values medical costs and work time. The medical costs may be overestimated as they are assumed to be the same as medical costs for a case of Giardiasis which has a significantly longer duration. However, the Agency believes it is appropriate not to prorate medical costs for the shorter duration of Cryptosporidiosis because (1) available data suggests that the median length of hospital stays is essentially the same for Cryptosporidiosis compared to Giardiasis; (2) the Harrington et al. study was conducted in the mid-1980's, and consequently, the higher direct medical costs associated with treating individuals with HIV/AIDS, who are more severely impacted by Cryptosporidiosis, was not included; and (3) Cryptosporidiosis has no known medical treatment and available data indicates that the range of the length of hospital stays for immunocompromised individuals is larger for cases of Cryptosporidiosis compared to Giardiasis. The Agency also recognizes however, that many individuals with Cryptosporidiosis do not seek medical treatment and thus have little or no associated medical cost, and that the percentage of such cases may be higher for Cryptosporidiosis than Giardiasis given its shorter duration.

The benefits of the turbidity provisions of LT1ESWTR come from improvements in filtration performance at water systems. The benefits analysis accounts for some of the variability and uncertainty in the analysis by estimating benefits under two different current treatment and three improved removal assumptions. In addition, EPA used Monte Carlo simulations to derive a distribution of estimates to address uncertainty.

In order to quantify the benefits of this rule, the Agency estimated changes in the incidence of cryptosporidiosis that would result from the rule. The analysis included estimating the baseline (pre-LT1ESWTR) level of exposure and risk from *Cryptosporidium* in drinking water and the reductions in such exposure and risk resulting from the turbidity provisions of the LT1ESWTR. Baseline levels of *Cryptosporidium* in finished water were estimated by assuming national source water occurrence distribution (based on data by LeChevallier and Norton, 1995) and a national distribution of *Cryptosporidium* removal by treatment.

In the LT1ESWTR economic analysis, the following two assumptions were made regarding the current *Cryptosporidium* oocyst removal performance to estimate finished water *Cryptosporidium* concentrations. First, based on treatment removal efficiency data presented in the proposal, EPA assumed a national distribution of physical removal efficiencies with a mean of 2.0 logs and a standard deviation of 0.63 logs. Because the finished water concentrations of oocysts represent the baseline against which improved removal from the LT1ESWTR is compared, variations in the log removal assumption could have considerable impact on the risk assessment. Second, to evaluate the impact of the removal assumptions on the baseline and resulting improvements, an alternative mean log removal/inactivation assumption of 2.5 logs and a standard deviation of 0.63 logs were also used to calculate finished water concentrations of *Cryptosporidium.*

For each of the two baseline assumptions, EPA assumed that a certain number of plants would show low, mid, or high improved removal as a result of the turbidity provisions. The amount of improved removal depends upon factors such as water matrix conditions, filtered water turbidity effluent levels, and coagulant treatment conditions. The low, mid, and high improved removals were derived from Patania et al., (1995). This study demonstrated that an incremental decrease in turbidity from 0.3 NTU to 0.1 NTU (or a 0.2 NTU reduction overall) resulted in increased oocyst removals of up to one-log. The Agency used this data to construct low, mid, and high removal assumptions that would capture uncertainty associated with improved removal. The Agency also utilized different low, mid, and high removal assumptions for distinct categories of current turbidity performance (<.2NTU, 0.2–0.3 NTU, 0.3–0.4 NTU, and > 0.4 NTU). For instance, systems currently operating at greater than 0.4 NTU would need to target 0.2 NTU to ensure compliance with the 0.3 NTU limit and EPA accordingly assumed a low improved removal of 0.5-log, a mid improved removal of 0.75-log and a high improved removal of 0.9-log. However, systems currently operating between 0.2 NTU and 0.3 NTU were only expected to minimally improve turbidity performance and would therefore only expect improved log removals of 0.15, 0.25, and 0.3 (low, mid, and high). As a result, the economic analysis considers various baseline and with-rule scenarios to develop a range of endemic health damages avoided. Additional information is found in the Benefits chapter of the Economic Analysis supporting today's final rule.

The finished water *Cryptosporidium* distributions that would result from additional log removal with the turbidity provisions were derived assuming that additional log removal was dependent on current removal, i.e., that systems currently operating at the highest filtered water turbidity levels would show the largest improvements or high improved removal assumption. For example, plants now failing to meet a 0.4 NTU limit would show greater removal improvements than plants now meeting a 0.3 NTU limit.

In addition to assuming the more conservative baseline and removal assumptions, the lower-end of the LT1ESWTR's benefit estimate does not include valuations for leisure time, productivity losses (returning to work but still experiencing symptoms), and other loss categories that the authors discuss but do not quantify (e.g., ''high valued'' leisure). The authors (Harrington *et al.*) were highly confident in the estimates for direct medical expenditures and work losses which comprise the lower benefit estimate; and less confident in the values for leisure time losses and productivity losses which are included in the upper benefit estimate only. The decreased level of confidence was based on the data and methods used to estimate only these losses. The authors also conclude that: ''* * * nonetheless, the loss categories in this group–[productivity, leisure time, etc.] are unquestionably present and therefore, raise losses above those reported in [the lower-end benefit estimate]''. The Agency believes that these categories have positive value as stated in Harrington *et al.* consequently the lower-end estimate for the

LT1ESWTR understates the true value of these loss categories.

The Agency further notes that the medical expense component of the valuation may be overstated because it is not prorated for the shorter duration of Cryptosporidiosis relative to Giardiasis (mean duration of 11.5 v. 41.6 days). The Agency believes this is appropriate however, because (1) available data suggests that the median length of hospital stays is essentially the same for Cryptosporidiosis compared to Giardiasis; (2) the Harrington et al. study was conducted in the mid-1980's, and consequently, the higher direct medical costs associated with treating individuals with HIV/AIDS, who are more severely impacted by Cryptosporidiosis, was not included; and (3) Cryptosporidiosis has no known medical treatment and available data indicates that the range of the length of hospital stays for immunocompromised individuals is larger for cases of Cryptosporidiosis compared to Giardiasis. The Agency also recognizes however, that many individuals with Cryptosporidiosis do not seek medical treatment and thus have little or no associated medical cost, and that the percentage of such cases may be higher for Cryptosporidiosis than Giardiasis given its shorter duration.

Table V.1 indicates estimated annual quantified benefits associated with implementing the LT1ESWTR. The benefits analysis examines only the endemic health damages avoided based on the LT1ESWTR for each of the turbidity provision scenarios discussed previously. For each of these scenarios, EPA calculated the mean of the distribution of the number of illnesses avoided. The 10th and 90th percentiles imply that there is a 10 percent chance that the estimated value could be lower than the 10th percentile and there is a 10 percent chance that the estimated value could be higher than the 90th percentile. The modeling assumptions used to obtain the distribution of illness and mortality avoided for each baseline and the removal scenarios considers both variability and uncertainty. Specifically, the Agency used a 2-dimensional Monte Carlo simulation to include both uncertainty and variability inputs. The components that EPA considered uncertain include the probability of illness given an infection, the variability of *Cryptosporidium* to cause either an infection or illness, and the infectivity dose-response factor. The variability components include: *Cryptosporidium* occurrence in the finished water, individual daily drinking water consumption, and the number of days per year of exposure.

In the 2-dimensional simulation structure, a set of values for the uncertainty parameters is chosen from their respective distributions. This set of values is then ''frozen'' and a specified number of iterations are run where different values are chosen for the variability factors. This process is repeated for some specified number of sets of uncertainty parameters. For this analysis, 250 sets of uncertainty parameters were used, with 1,000 variability iterations performed on each of the 250 uncertainty sets.

This modeling exercise provides the Agency with 250 sets of statistics for individual annual risk of illness (e.g., mean, standard deviation) that each reflect different possible combinations of uncertainty factors. The 250 estimates for each set of statistics (i.e., mean, confidence intervals) were then used to compute an overall population average annual risk of illness.

Next, the Agency estimates cases of illness and mortality from the average annual risk of illness estimates. In order to do this, the average annual probability of illness is multiplied by the number of exposed individuals. In a separate Monte Carlo simulation for this calculation, the average annual probability of illness is treated as an uncertainty variable. As a result, the Agency has mean estimates with confidence intervals for various baseline and post LT1ESWTR assumptions regarding *Cryptosporidium* removal from source water. The 90th percentile confidence bounds on the expected values largely reflect the following uncertainty variables: the probability of illness given infection, the variability of *Cryptosporidium* to cause either an infection or illness, and the infectivity dose-response factor.

The Agency has done its best to represent a reasonable range of quantifiable uncertainty using standard modeling techniques. However, the Agency recognizes that additional sources of uncertainty exist which could not be quantified. To the extent that these are significant, the true range of uncertainty may be greater than that reflected in the quantified analysis.

EPA has evaluated drinking water consumption data from USDA's 1994–1996 Continuing Survey of Food Intakes by Individuals (CSFII) Study. EPA's analysis of the CSFII Study using the ''all sources, consumer only'' information resulted in a daily water ingestion lognormally distributed with a mean of 1.2 liters per person per day (USEPA, 2000j). Results of alternative model calculations based on USDA consumption data for ''community water supplies, all respondents'' (mean of 0.93 liters per person per day) are presented in the appendix to the economic analysis as a lower bound estimate.

TABLE V.1.—QUANTIFIED BENEFITS FROM ILLNESSES AND MORTALITIES AVOIDED ANNUALLY FROM TURBIDITY PROVISIONS

[$Millions]*

Quantified benefits	Daily drinking water ingestion and baseline Cryptosporidium log-removal assumptions, $Millions, 1999					
	2.0 log			2.5 log		
	Low	Mild	High	Low	Mid	High
Mean Benefit from Avoided Illnesses	$23.9–$42.4	$31.6–$56.0	$32.9–$58.3	$9.5–$16.8	$11.2–$19.8	$12.7–$22.6
10th Percentile	11.4–20.3	15.2–27.0	14.1–24.9	2.2–3.9	2.8–5.0	4.2–7.5
90th Percentile	50.1–88.8	58.8–104.2	56.5–100.2	26.6–47.2	27.6–48.9	33.6–59.5
Mean Benefits from Avoided Mortalities	23.7	31.3	32.5	9.4	11.1	12.6
10th Percentile	11.3	15.0	13.9	2.2	2.8	4.2
90th Percentile	49.6	58.2	55.9	26.3	27.3	33.2
Total Mean Quantified Benefits	47.6–66.1	62.9–87.3	65.4–90.9	18.9–26.2	22.2–30.9	25.4–35.2

*Totals may not equal due to rounding.

According to the economic analysis performed for the LT1ESWTR published today, the rule is estimated to reduce the mean annual number of illnesses caused by *Cryptosporidium* in water systems with improved filtration performance by 12,000 to 41,000 cases per year depending upon which of the six baseline and improved *Cryptosporidium* removal assumptions was used, and assuming the 1.2 liter drinking water consumption distribution. Based on these values, the mean estimated annual benefits of reducing the illnesses ranges from $9.5 million to $58.3 million per year. The economic analysis also indicated that the rule could result in a mean reduction of 1 to 5 fatalities each year, depending upon the varied baseline and improved removal assumptions. Using a mean value of $6.3 million per statistical life saved, reducing these fatalities could produce benefits in the range of $9.4 million to $32.5 million. Combining the value of illness and mortalities avoided, the estimate of the total quantified annual benefits of the LT1ESWTR range from $18.9 million to $90.9 million. However, this range does not incorporate many of the sources of uncertainty related to quantifying benefits, including many benefits the Agency was unable to evaluate. Accordingly, incorporating additional uncertainties would necessarily increase the size of the range.

New occurrence data and infectivity data is currently being evaluated by the Agency in the context of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR). The analysis is currently ongoing and peer review has not been completed. EPA conducted a sensitivity analysis in the economic analysis supporting today's final rule to predict the effect that new data may have on the benefits presented earlier. Table V.2 provides a summary of this sensitivity analysis and depicts the cumulative change to the benefits range that each of the four new changes (new occurrence data, new infectivity data, new morbidity data, and new viability data) could have on benefits. The economic analysis includes a more detailed analysis using this data.

TABLE V.2.—SUMMARY OF RESULTS OF SENSITIVITY ANALYSIS TO PREDICT EFFECTS OF NEW DATA AND INFORMATION ON RANGE OF BENEFITS

	Current EA	New occurence data	New infectivity data	New morbidity data	New viability data
Change	No Changes	Occurrence changes from 4.7 oocyst/L to 1.06 oocyst/L.	Rate of infection from .00424 to .02317.	Morbidity changes from 0.39 to 0.5.	Viability changes from 16.4 percent to 55.2 percent.
Benefits Range	$18.9–$90.9	$5.4–$25.2	$17.3–$74.4	$22.5–$88.0	$51.2–$195.8

2. Non-Quantified Health and Non-Health Related Benefits

The quantified benefits from filter performance improvements do not fully capture all the benefits of the turbidity provision. Even the upper bound estimates, which are based on a cost-of-illness (COI) methodology (expanded to incorporate lost leisure time and lost productivity while working), may not fully capture the willingness-to-pay to avoid a case of Cryptosporidiosis. In addition, the Harrington, et al. study was conducted in the mid-1980's in a rural community and may not be fully representative of the current national population including individuals with HIV/AIDS and chemotherapy patients that are more severely impacted by Cryptosporidiosis. If this population was more accurately represented, it may be that the average per-case valuation would be higher than the range presented in this analysis. Further, the turbidity provisions are also expected to decrease the risk of waterborne disease outbreaks. However, the quantified benefits reflect only the reduction in endemic Cryptosporidiosis and not any outbreak-related illness or mortalities.

Other disinfection resistant pathogens may also be removed more efficiently due to implementation of the LT1ESWTR. Exposure to other pathogenic protozoa, such as *Giardia,* or other waterborne bacterial or viral pathogens are likely to be reduced by the provisions of this rule as well.

In addition to preventing illnesses, this rule is expected to have other non-health related benefits. During an outbreak, local governments and water systems must issue warnings and alerts and may need to provide an alternative source of water. Systems also face negative publicity and possibly legal costs. Businesses have to supply their customers and employees with alternative sources of water and some, especially restaurants, may even have to temporarily close. Households also have to boil their water, purchase water, or obtain water from another source. A study of a Giardia outbreak in Luzerne County, Pennsylvania showed that these non-health related outbreak costs can be quite significant (Harrington *et al.,* 1985). This outbreak resulted in an estimated loss to individuals of $31 million to $92 million. Additional losses were also calculated for restaurants and bars ($2 million to $7 million), government agencies ($0.4 million) and the water supply utility ($3 million).

The remaining rule provisions (disinfection benchmarking, covered finished water reservoirs, inclusion of *Cryptosporidium* in the GWUDI definition, and inclusion of *Cryptosporidium* in watershed control requirements for unfiltered systems) provide additional benefits. However, EPA is only able to discuss the benefits of these rule provisions qualitatively because of data limitations. The disinfection benchmark provision will ensure that adequate microbial protection is in place if a system must make changes to its disinfection practices as a result of the Stage 1 DBP rule. Covering finished water reservoirs will protect the finished water from becoming re-contaminated from such things as animal or bird droppings, surface water runoff, and algae. If *Cryptosporidium* is found in ground water supplies, they will be required to change treatment practice to prevent illness. Finally, by requiring *Cryptosporidium* control in watersheds of unfiltered systems, this will minimize the potential for illness and may also lower the overall costs of drinking water treatment.

D. What Are the Incremental Costs and Benefits?

EPA evaluated the incremental or marginal costs of today's final rule turbidity provision by analyzing various turbidity limits, 0.3 NTU, 0.2 NTU, and 0.1 NTU. For each turbidity limit, EPA developed assumptions about which process changes systems might implement to meet the turbidity level and how many systems would adopt each change. The comparison of total compliance cost estimates shows that costs are expected to increase

significantly across other turbidity limits considered by the Agency. The total cost of a 0.2 NTU limit is 346 percent higher than the final rule limit of 0.3 NTU, and a 0.1 NTU limit would be 1,192 percent higher.

E. Are There Benefits From the Reduction of Co-Occurring Contaminants?

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. For example, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants including arsenic.

The technologies used to reduce individual filter turbidities have the potential to reduce concentrations of other pollutants as well. Reductions in turbidity that result from today's proposed rule are aimed at reducing *Cryptosporidium* by physical removal. However, health risks from *Giardia lamblia* and emerging disinfection resistant pathogens, such as microsporidia, *Toxoplasma,* and *Cyclospora,* are also likely to be reduced as a result of improvements in turbidity removal. The frequency and extent that LT1ESWTR would reduce risk from other contaminants has not been quantitatively evaluated because of the Agency's lack of data on the removal efficiencies of various technologies for emerging pathogens and the lack of co-occurrence data for microbial pathogens and other contaminants from drinking water systems.

F. Is There Increased Risk From Other Contaminants?

It is unlikely that LT1ESWTR will result in any increased risk from other contaminants. Improvements in plant turbidity performance will not result in any increases in risk. In fact the disinfection benchmarking component of today's final LT1ESWTR will provide information to systems so they can minimize the increased risk from microbial contaminants as they take steps to address risks associated with DBPs under the Stage 1 DBPR.

G. What Are the Uncertainties in the Risk, Benefit and Cost Estimates for the LT1ESWTR?

EPA has included in the economic analysis, a detailed discussion of the possible sources of uncertainty in risk, benefit and cost estimates. Some sources of possible uncertainty associated with calculation of risk and benefits include occurrence of *Cryptosporidium* oocysts in source waters and finished waters, reduction of *Cryptosporidium* oocysts due to improved treatment, viability and infectivity of *Cryptosporidium* oocysts, characterization of risk, and willingness to reduce risk and avoid costs. Uncertainty associated with costs includes assumptions with respect to treatment a system might choose to employ to comply with the rule, assumptions about costs of labor, maintenance, and capital, and the number of systems expected to undertake certain activities. The Agency believes that the risks, benefits, and costs have been accurately portrayed. Discussions and analyses of risks, benefits, and costs in the economic analysis indicate where uncertainty may be introduced and to the extent possible, the effect uncertainty may have on analysis (USEPA, 2001a).

H. What Is the Benefit/Cost Determination for the LT1ESWTR?

The Agency has determined that the benefits of the LT1ESWTR justify the costs. As shown in Table V.3, the quantified net benefits of this rule based on the Agency's estimate range from $20.6 million to $51.4 million using the 3 percent discount rate ($25.9 million to $46.1 million at the 7 percent discount rate). Additionally, EPA believes that quantified net benefits would be larger if both unquantified benefits and costs were able to be monetized.

TABLE V.3.—ANNUALIZED NET BENEFITS OF THE LT1ESWTR, MILLIONS, 1999 DOLLARS

	Benefit range	Costs using a 3 percent discount rate	Costs using a 7 percent discount rate	Net benefits (3 percent)	Net benefits (7 percent)
Estimate of Benefits	$18.9–$90.9	$39.5	$44.8	$−20.6–$51.4	$−25.9–$46.1

VI. Other Requirements

A. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 603 of the RFA, EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from representatives of small entities that would potentially be regulated by the rule in accordance with section 609(b) of the RFA. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report found in the docket for today's final rule (USEPA, 1998k). The Panel recommendations emphasized the need to provide small systems flexibility. The Agency has structured today's final

LT1ESWTR with an emphasis on providing flexibility and reducing burden for small systems. For example, the Agency originally contemplated requiring four quarters of TTHM and HAA5 monitoring and disinfection profiling based on daily measurements. Today's final rule requires profiling based on weekly measurements and allows systems the option of using one quarter of TTHM and HAA5 monitoring to opt-out of profiling. Today's rule also provides systems with two or fewer filters the flexibility to monitor combined filter effluent in lieu of individual filter turbidity monitoring, effectively allowing these systems to reduce their recordkeeping burden. A complete summary of the Panel's recommendations is presented in the proposal (65 FR 19046, 19127–19130).

While EPA could have certified the proposed rule based on the proposed rule requirements, the Agency originally developed an IRFA (see 65 FR 19046, 19126–19127) and convened an SBAR Panel because several of the additional alternatives EPA was requesting comment on would have resulted in substantial costs for small systems thereby preventing the Agency from certifying. While EPA included these additional alternatives in the proposal and estimated costs in the economic analysis for the proposal, the Agency re-evaluated the economic effects on small entities after publication of the April 10, 2000 LT1ESWTR proposal using the rule requirements of today's final rule and was able to certify that today's final rule will not have a significant economic impact on a substantial number of small entities.

EPA's analysis showed that of the approximately 11,000 small entities potentially affected by the LT1ESWTR, over 5,000 are expected to incur average annualized costs of less than $70 dollars (0.003 percent of average annual revenue) while slightly more than 3,000 are expected to incur average annualized costs of less than $850 dollars (0.03 percent of average annual revenue). Of the remaining systems, approximately 500 systems are expected to incur average annualized costs of approximately $2,500 dollars (0.1 percent of average annual revenue), approximately 2,000 systems are expected to incur average annualized costs of approximately $13,000 dollars (0.6 percent of average annual revenue). Less than 100 systems are expected to incur average annualized costs of approximately $15,700 dollars (0.7 percent of average annual revenue). The Agency has included a detailed description of this analysis in the Regulatory Flexibility Screening Analysis prepared for the rule (USEPA, 2000e).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, and has assigned OMB control number 2040–0229. The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, in some cases, and to evaluate compliance with the rule. For the first three years after February 13, 2002, the major information requirements are related to disinfection profiling activities. The information collection requirements in §§ 141.530–141.536, 141.540–141.544, 141.550–141.553, 141.560–141.564, and 141.570–141.571, for systems, and §§ 142.14 and 142.16, for States, are mandatory. The information collected is not confidential. The final estimate of aggregate annual average burden hours for LT1ESWTR is 330,329. Annual average aggregate cost estimate is $1,583,538 for capital (expenditures for monitoring equipment), and $1,919,563 for operation and maintenance including lab costs (which is a purchase of service). The burden hours per response is 21.8. The frequency of response (average responses per respondent) is 2.8 annually. The estimated number of likely respondents is 5,404 (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

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 UMRA section 202, 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 by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one 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.

EPA has determined that this rule 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. The estimated annual cost of this rule is $39.5 million. Thus today's rule is not

subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Of the approximately 6,500 small government entities potentially affected by the LT1ESWTR, approximately 3,000 are expected to incur average annualized costs of less than $70 dollars (0.003 percent of average annual revenue) while approximately 2,000 are expected to incur average annualized costs of less than $850 dollars (0.03 percent of average annual revenue). Of the remaining systems, less than 300 are expected to incur average annualized costs of approximately $2,500 dollars (0.1 percent of average annual revenue), approximately 1,200 systems are expected to incur average annualized costs of approximately $13,000 dollars (0.6 percent of average annual revenue). Less than 100 systems are expected to incur average annualized costs of approximately $15,700 dollars (0.7 percent of average annual revenue). While today's final rule only applies to systems serving fewer than 10,000, it is not unique as it provides a comparable level of health protection to individuals served by small systems as the IESWTR provided to individuals served by large systems. While there are small differences between the LT1ESWTR and IESWTR, these differences reflect an effort to reduce burden for small systems while still maintaining a comparable level of health protection. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

Nevertheless, EPA has tried to ensure that State, local, and Tribal governments had opportunities to provide comment. EPA consulted with small governments to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. As discussed next, a variety of stakeholders, including small governments, were provided the opportunity for timely and meaningful participation in the regulatory development process. EPA used these opportunities to notify potentially affected small governments of regulatory requirements being considered.

EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998. Two public stakeholder meetings, which were announced in the **Federal Register**, were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. Stakeholders include representatives of State, local and Tribal governments, environmental groups and publicly owned and privately owned public water systems. In addition to these meetings, EPA has held several formal and informal meetings with stakeholders including the Association of State Drinking Water Administrators and representatives of State and local elected officials. A summary of each meeting and attendees is available in the public docket for this rule. EPA also convened a Small Business Advocacy Review (SBAR) Panel in accordance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns including those of small local governments. The SBAR Panel allows small regulated entities to provide input to EPA early in the regulatory development process. In early June 1999, EPA mailed an informal draft of the LT1ESWTR preamble to the approximately 100 stakeholders who attended one of the public stakeholder meetings. Members of trade associations and the SBREFA Panel also received the draft preamble. EPA received valuable suggestions and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. The majority of concerns dealt with reducing burden on small systems and maintaining flexibility.

To inform and involve Tribal governments in the rulemaking process, EPA presented the LT1ESWTR at three venues: the 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the EPA/Inter Tribal Council of Arizona, Inc. Tribal consultation meeting. Over 900 attendees representing Tribes from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At the first two conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1ESWTR.

At the EPA/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. The presentation materials and meeting summary were sent to over 500 Tribes and Tribal organizations. Additionally, EPA contacted each of the 12 Native American Drinking Water State Revolving Fund Advisors to invite them, and representatives of their organizations to the stakeholder meetings described previously.

During the comment period for today's final rule, the Agency held a public meeting in Washington D.C. on April 14, 2000. Additionally, the proposed rule was either presented or discussed in nearly 50 meetings across the U.S. Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders requesting comment. EPA received 67 comments from a variety of stakeholders including 24 States, 21 municipalities, one Tribe, one elected official, two consultants, eight trade groups, and four private industries.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about the LT1ESWTR requirements. The Agency is developing plain-English guidance that will explain what actions a small entity must take to comply with the rule. Also, the Agency has developed a fact sheet that concisely describes various aspects and requirements of the LT1ESWTR. This fact sheet is available by calling the Safe Drinking Water Hotline at 800–426–4791.

D. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 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 voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards, thus, NTTAA does not apply to this rule. It should be noted, however, that systems complying with this rule need to use one of three previously approved technical standards already included in § 141.74 (a). Method 2130B (APHA, 1995), is published in Standard Methods for the Examination of Water and Wastewater (19th ed.) and is a voluntary consensus standard. The Great Lakes Instrument Method 2, has been approved by USEPA as an alternate test procedure (Great Lakes Instruments, 1992). EPA Method 180.1 for turbidity measurement was published in August 1993 in Methods for the Determination of Inorganic

Substances in Environmental Samples (EPA–600/R–93–100) (USEPA, 1993).

Today's final rule also requires calibration of the individual turbidimeter to be conducted using procedures specified by the manufacturer. EPA encouraged comments on this aspect of the rulemaking and specifically invited the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation. EPA received no comments on this issue.

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

This preamble has discussed how the IESWTR served as a template for the development of the LT1ESWTR. As such, the Agency also built on the efforts conducted during the IESWTRs development to comply with Executive Order 12898. On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, Tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between 11 cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 meeting were to:

—Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;
—Identify key issues of concern to stakeholders, and;
—Receive suggestions from stakeholders concerning ways to increase representation of communities in EPA's Office of Water drinking water regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

The LT1ESWTR applies to community water systems, non-transient non-community water systems, and transient non-community water systems that use surface water or GWUDI as their source water for PWSs serving less than 10,000 people. These requirements will also be consistent with the protection already afforded to people being served by systems serving 10,000 or more persons.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and; (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we therefore have assessed the environmental health effects of *Cryptosporidium* on children. The results of this assessment are contained in the LT1ESWTR economic analysis (USEPA, 2001a). A copy of the analysis and supporting documents are found in the public docket for today's final rule (W–99–10, Final Long Term 1 Enhanced Surface Water Treatment Rule. The docket is available for public review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460.

The risk of illness and death due to cryptosporidiosis depends on several factors, including age, nutrition, exposure, genetic variability, disease and immune status of the individual. Mortality resulting from diarrhea shows the greatest risk of mortality occurring among the very young and elderly (Gerba *et al.,* 1996). For *Cryptosporidium,* young children are a vulnerable population subject to infectious diarrhea (CDC 1994). Cryptosporidiosis is prevalent worldwide, and its occurrence is higher in children than in adults (Fayer and Ungar, 1986).

Cryptosporidiosis appears to be more prevalent in populations, such as infants, that may not have established immunity against the disease and may be in greater contact with environmentally contaminated surfaces (DuPont, *et al.,* 1995). An infected child may spread the disease to other children or family members. Evidence of such secondary transmission of cryptosporidiosis from children to household and other close contacts has been found in a number of outbreak investigations (Casemore, 1990; Cordell *et al.,* 1997; Frost *et al.,* 1997). Chapelle et al., (1999) found that prior exposure to *Cryptosporidium* through the ingestion of a low oocyst dose provides protection from infection and illness. However, it is not known whether this immunity is life-long or temporary. Data

also indicate that either mothers confer short term immunity to their children or that babies have reduced exposure to *Cryptosporidium,* resulting in a decreased incidence of infection during the first year of life. For example, in a survey of over 30,000 stool sample analyses from different patients in the United Kingdom, the one to five year age group suffered a much higher infection rate than individuals less than one year of age. For children under one year of age, those older than six months of age showed a higher rate of infection than individuals aged fewer than six months (Casemore, 1990).

EPA has not been able to quantify the health effects for children as a result of Cryptosporidium-contaminated drinking water. However, the result of the LT1ESWTR will be a reduction in the risk of illness for the entire population, including children. Because available evidence indicates that children may be more vulnerable to Cryptosporidiosis than the rest of the population, the LT1ESWTR would, therefore, result in greater risk reduction for children than for the general population.

H. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the SDWA, the Agency consulted with the National Drinking Water Advisory Council (NDWAC), the Secretary of Health and Human Services, and the EPA Science Advisory Board (SAB) on the proposed LT1ESWTR. None of the three consultations resulted in substantive comments on the LT1ESWTR.

On March 13 and 14, 2000 in Washington, DC, the Agency met with SAB during meetings open to the public where several of the Agency's drinking water rules were discussed. A copy of the SAB's comments are found in the docket (USEPA, 2000l). Comments on the LT1ESWTR were generally supportive.

On May 10, 2000 in San Francisco, California, the Agency met with NDWAC. A copy of the materials presented to the NDWAC, as well as the charge presented to the council are found in the docket (USEPA, 2000f, NDWAC, 2000).

EPA invited the Secretary of Health and Human Services to the April 14th, 2000 informational meeting regarding the proposed Long Term 1 Enhanced Surface Water Treatment Rule and consulted with the Centers for Disease Control (CDC) during a June 20, 2000 conference call with the Centers' Working Group on Waterborne Cryptosporidiosis. The meeting notes for that call are found in the docket (CDC, 2000). CDC's role as an Agency of the Department of Health and Human Services is to provide a system of health surveillance to monitor and prevent the outbreak of diseases. With the assistance of States and other partners, CDC guards against international disease transmission, maintains national health statistics, and provides for immunization services and supports research into disease and injury prevention.

I. Executive Order 13132: Executive Orders on 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 Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rule does not have a substantial direct effect on local and State governments because it is not expected to impose substantial direct compliance costs. The rule imposes annualized compliance costs on State and local governments of approximately $30.6 million. $6.4 million of these costs are attributable to States, while $24.2 million is attributable to local governments serving fewer than 10,000 persons. As described in Section V1.A of the preamble for today's final rule, this rule will not have a significant economic impact on a substantial number of small entities, including small governments. Furthermore, the rule does not have a substantial direct effect on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 because the rule does not change the current roles and relationships of the Federal government, State governments and local governments in implementing drinking water programs. Thus Executive Order 13132 does not apply to this rule. Although the Executive Order does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition to our outreach efforts described earlier, on May 30, 2000, the Agency held a meeting in Washington, DC with ten representatives of elected State and local officials to discuss how new Federal drinking water regulations (LT1ESWTR, FBRR, Ground Water Rule, Radon Rule, Radionuclides Rule, and Arsenic Rule) may affect State, county, and local governments. Throughout the consultation, stakeholders asked EPA for clarification of basic concepts and rule elements. EPA addressed these issues throughout the consultation and provided background and clarification to promote better understanding of the issues. For example, stakeholders asked EPA to describe what *Cryptosporidium* is and how individuals are diagnosed with cryptosporidiosis. A detailed summary of this consultation meeting and the concerns raised is found in the docket (USEPA, 2000g). No significant concerns were raised regarding the LT1ESWTR.

J. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revoked Executive Order 13084 (also entitled Consultation and Coordination with Indian Tribal Governments.'') as of that date. However, EPA developed and proposed this final rule when Executive Order 13084 was in effect, and before the effective date of the consultation requirements of Executive Order 13175. Therefore, the consultation requirements of Executive Order 13084 apply to this rule.

Under Executive Order 13084, EPA could not issue a regulation that was not required by statute, that significantly or uniquely affected the communities of Indian Tribal governments, and that imposed substantial direct compliance costs on those communities, unless the Federal government provided the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consulted with those governments.

Executive Order 13084 required EPA to provide to the Office of Management and Budget, in a separately identified

section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 required EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

EPA has concluded that this rule will not significantly or uniquely affect communities of Indian Tribal governments, and will not impose substantial direct compliance costs on such communities. This rule will affect approximately 70 of the 700 total Tribal drinking water systems. Of these 70 systems, half are estimated to incur annualized compliance costs of less than $70 per year (0.003 percent of average annual revenue) and approximately 20 systems are estimated to incur annualized compliance costs of less than $850 per year (0.03 percent of average annual revenue). The remaining systems would incur an estimated annualized compliance costs of less than $13,000, or 0.6 percent of average annual revenue.

Nonetheless, EPA provided representatives of Tribal governments with several opportunities to become knowledgeable of the proposed rule and to provide meaningful and timely input in its development. EPA began outreach efforts to develop the LT1ESWTR in the summer of 1998 as discussed in detail above in the UMRA and Federalism sections. To inform and involve the representatives of Tribal governments specifically, EPA presented the LT1ESWTR at three venues: The 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the EPA/Inter Tribal Council of Arizona, Inc. Tribal consultation meeting. Summaries of the meetings have been included in the public docket for this rulemaking. EPA's consultation, the nature of the Tribal concerns, and the position supporting the need for this rule are discussed in Section VI.C., which addresses compliance with UMRA.

Over 900 Tribal representatives from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At the first two conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1ESWTR. At the EPA/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. The presentation materials and meeting summary were sent to over 500 Tribes and Tribal organizations. Additionally, EPA contacted and invited each of the 12 Native American Drinking Water State Revolving Fund Advisors to attend the meetings described above.

During the comment period for today's final rule, the Agency held a public meeting in Washington, DC on April 14, 2000 which was announced in the **Federal Register**. Additionally, the proposed rule was either presented or discussed in nearly 50 meetings across the country. Finally, EPA mailed approximately 200 copies of the proposed rule to stakeholders, including Tribal representatives, requesting comment. EPA received 67 comments, one of which was from a Tribe. The Tribe indicated that they operated one surface water treatment plant and asked several clarifying questions with respect to optional monitoring and turbidity monitoring.

K. Likely Effect of Compliance With the LT1ESWTR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. This analysis can be found in the LT1ESWTR economic analysis (USEPA, 2001a). Overall water system capacity is defined in EPA guidance (USEPA, 1998j) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: Technical, managerial, and financial. Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements. Technical, managerial, and financial capacity can be assessed through key issues and questions, including:

Technical Capacity	
Source water adequacy	Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
Infrastructure adequacy	Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
Technical knowledge and implementation.	Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?
Managerial Capacity	
Ownership accountability	Are the system owner(s) clearly identified? Can they be held accountable for the system?
Staffing and organization	Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?

Effective external linkages	Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?
Financial Capacity	
Revenue sufficiency	Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
Credit worthiness	Is the system financially healthy? Does it have access to capital through public or private sources?
Fiscal management and controls	Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

Systems not making significant modifications to the treatment process to meet LT1ESWTR requirements are not expected to require significantly increased technical, financial, or managerial capacity. As noted previously, less than 1 percent of affected systems are expected to incur annual costs exceeding 1 percent of their annual revenue as described in Section VI.A. Accordingly, most systems are not expected to require significantly increased technical, financial, or managerial capacity. EPA does recognize that a very small number of facilities may realize some technical, managerial, or financial capacity concerns as a result of the rule. EPA works closely with organizations such as the National Rural Water Association and the American Water Works Association to develop technical and managerial tools, materials, and assistance to aid small systems. Additionally, the Safe Drinking Water Act, as amended in 1996, established the Drinking Water State Revolving Fund (DWSRF) to make funds available to drinking water systems to finance infrastructure improvements. The program emphasizes providing funds to small and disadvantaged communities and to programs that encourage pollution prevention as a tool for ensuring safe drinking water.

L. Plain Language

Executive Order 12866 requires each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. Of the several techniques typically utilized for writing readably, using a question and answer format, and using the word 'you' for whoever must comply, do the most to improve the look and sound of a regulation. Today's preamble and final rule use both of these principles and was developed using a plain language format, except in the case of modifications or additions to existing subparts of parts 141 and 142, where such a format would not fit into existing rule language. The Agency requested comment on this approach and several commenter's indicated that the proposal was clear and easy to understand.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 13, 2002.

N. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355, (May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The requirements in this rule would have a negligible impact upon the energy demands of some public water supply systems. Therefore, there is not a significant adverse effect on energy supply, distribution, or use.

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List of Subjects

40 CFR Parts 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding under the indicated heading:

a. By adding entries 141.530–141.536, 141.540–141.544, 141.550–141.553, 141.560–141.564 and 141.570–141.571 in numerical order.

b. By removing the entry 142.14(a)–(d)(7) and adding in its place a new entry § 142.14(b)–(d)(7).

c. By adding a new entry for 142.14(a) in numerical order.

d. By adding new entries for 142.16(g) and 142.16(j) in numerical order.

The additions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.530–141.536	2040–0229
141.540–141.544	2040–0229
141.550–141.553	2040–0229
141.560–141.564	2040–0229
141.570–141.571	2040–0229
* * * * *	
142.14(a)	2040–0229 2040–0090
142.14(b)–(d)(7)	2040–0090
* * * * *	
142.16(g)	2040–0229
142.16(j)	2040–0229

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by revising the definitions of ''Comprehensive performance evaluation'' (CPE), ''Ground water under the direct influence of surface water'' and ''Disinfection profile'' to read as follows:

§ 141.2 Definitions.

* * * * *

Comprehensive performance evaluation (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purpose of compliance with subparts P and T of this part, the comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

* * * * *

Disinfection profile is a summary of *Giardia lamblia* inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in § 141.172 (Disinfection profiling and benchmarking) in subpart P and §§ 141.530–141.536 (Disinfection profile) in subpart T of this part.

* * * * *

Ground water under the direct influence of surface water (GWUDI) means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium,* or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

5. Section 141.70 is amended by adding paragraph (e) to read as follows:

§ 141.70 General requirements.

* * * * *

(e) *Additional requirements for systems serving fewer than 10,000 people.* In addition to complying with requirements in this subpart, systems serving fewer than 10,000 people must also comply with the requirements in subpart T of this part.

6. Section 141.73 is amended by adding paragraph (a)(4) and revising paragraph (d) to read as follows:

§ 141.73 Filtration.

* * * * *

(a) * * *

(4) Beginning January 14, 2005, systems serving fewer than 10,000 people must meet the turbidity requirements in §§ 141.550 through 141.553.

* * * * *

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a) through (c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply. Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in § 141.173(b). Beginning January 14, 2005, systems serving fewer than 10,000 people must meet the requirements for other filtration technologies in § 141.550 through 141.553.

7. Section 141.153 is amended by revising the first sentence of paragraph (d)(4)(v)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(v) * * *

(C) When it is reported pursuant to § 141.73 or § 141.173 or § 141.551: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173, or § 141.551 for the filtration technology being used.

* * *

* * * * *

8. The heading to Subpart P is revised to read as follows:

Subpart P—Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People

* * * * *

9. Section 141.170 is amended by adding paragraph (d) to read as follows:

§ 141.170 General requirements.

* * * * *

(d) Subpart H systems that did not conduct optional monitoring under § 141.172 because they served fewer than 10,000 persons when such monitoring was required, but serve more than 10,000 persons prior to January 14, 2005 must comply with §§ 141.170, 141.171, 141.173, 141.174, and 141.175. These systems must also consult with the State to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice, as described in § 141.172(c)(1)(i) through (iv) must consult with the State prior to making such change.

10. Section 141.202 is amended in Table 1 by revising entry 6 to read as follows:

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

* * * * *

(a) * * *

TABLE 1 TO SEC. 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

*	*
(6) Violation of the Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR) or Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;	
*	*

* * * * *

11. Section 141.203 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

* * * * *

(b) * * *

(3) * * *

(ii) Violation of the SWTR, IESWTR or LT1ESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.

* * * * *

12. Appendix A to subpart Q is amended:

a. Under I.A. by revising entry 5.

b. Under I.A. by revising entry 7.

c. Adding a new entry 9.

d. Under I.G. by revising entry 10.

e. Revising endnote 6.

The additions and revisions read as follows:

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR): [3]				
* *	*	* *	*	* *
A. Microbiological Contaminants				
* *	*	* *	*	* *
5. Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level).	[6] 2,1	141.71(a)(2),141.71(c)(2)(i), 141.73(a)(2), 141.73 (b)(2), 141.73 (c)(2), 141.73(d), 141.173(a)(2), 141.173(b), 141.551(b).	3	141.74(a)(1), 141.74(b)(2), 141.74(c)(1), 141.174, 141.560(a)–(c), 141.561.
* *	*	* *	*	* *
7. Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. turbidity level (TT).	[7] 2	141.170–141.173, 141.500–141.553.	3	141.172, 141.174, 141.530–141.544, 141.560–141.564.
* *	*	* *	*	* *
9. Long Term 1 Enhanced Surface Water Treatment Rule violations.	2	141.500–141.553	3	141.530–141.544, 141.560–141.564.
* *	*	* *	*	* *
G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals. Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs).[9]				
* *	*	* *	*	* *
10. Bench marking and disinfection profiling.	N/A	N/A	3	141.172 141.530–141.544.
* *	*	* *	*	* *

Appendix A–Endnotes:

[1] Violations and other situations not listed in this table (e.g., reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

[2] MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique

[3] The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

* * * * * * *

[6] Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under the Surface Water Treatment Rule (SWTR), the Interim Enhanced Surface Water Treatment Rule (IESWTR), or the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) are required to consult with the primacy agency within 24 hours after learning of the violation. Based on this consultation, the primacy agency may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the primacy agency in the 24-hour period, the violation is automatically elevated to Tier 1.

[7] Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63 FR 69477) (§§ 141.170—141.171, 141.173—141.174) become effective January 1, 2002 for the Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving at least 10,000 persons. However, § 141.172 has some requirements that become effective as early as April 16, 1999. The Surface Water Treatment Rule remains in effect for systems serving at least 10,000 persons even after 2002; the Interim Enhanced Surface Water Treatment Rule adds additional requirements and does not in many cases supercede the SWTR.

* * * * * * *

[9] Subpart H community and non-transient non-community systems serving ≥10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning January 1, 2002. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL begining January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

Appendix B—[Amended]

13. Appendix B to subpart Q is amended by:

a. Revising entry A.2c.

b. Revising heading B.

c. Revising entries B.3., B.4, B.5, B.6., and B.7.

d. Revising endnotes 4, 6 and 10.

e. Revising endnote 8.

The revisions read as follows:

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG [1], mg/L	MCL [2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR):			
A. Microbiological Contaminants			
* * *	*	*	* * *
2c. Turbidity (IESWTR TT and LT1ESWTR TT) [8].	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
* * *	*	*	* * *
B. Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) and the Filter Backwash Recycling Rule (FBRR) violations:			
* * *	*	*	* * *
3. Giardia lamblia (SWTR/IESWTR/LT1ESWTR)	Zero	TT [10]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
4. Viruses (SWTR/IESWTR/LT1ESWTR)			
5. Heterotrophic plate count (HPC) bacteria [9] (SWTR/IESWTR/LT1ESWTR)			
6. Legionella (SWTR/IESWTR/LT1ESWTR)			
7. Cryptosporidium (IESWTR/FBRR/LT1ESWTR)			

* * * * * * *

[1] MCLG—Maximum contaminant level goal.

[2] MCL—Maximum contaminant level.

[4] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. The MCL for the montly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 CFR 141.13).

[6] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. Systems subject to the Surface Water Treatment Rule (both filtered and unfiltered) may not exceed 5 NTU. In addition, in filtered systems, 95 percent of samples each month must not exceed 0.5 NTU in systems using conventional or direct filtration and must not exceed 1 NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the primacy agency.

[8] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR) and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency. For systems subject to the LT1ESWTR (systems serving fewer than 10,000 people, using surface water or ground water under the direct influence of surface water) that use conventional filtration or direct filtration, after January 14, 2005 the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the LT1ESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency.

[9] The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

[10] SWTR, IESWTR, and LT1ESWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

14. Part 141 is amended by adding a new subpart T to read as follows:

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

141.500 General requirements
141.501 Who is subject to the requirements of subpart T?
141.502 When must my system comply with these requirements?
141.503 What does subpart T require?

Finished Water Reservoirs

141.510 Is my system subject to the new finished water reservoir requirements?
141.511 What is required of new finished water reservoirs?

Additional Watershed Control Requirements for Unfiltered Systems

141.520 Is my system subject to the updated watershed control requirements?
141.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?
141.522 How does the State determine whether my system's watershed control requirements are adequate?

Disinfection Profile

141.530 What is a Disinfection Profile and who must develop one?
141.531 What criteria must a State use to determine that a profile is unnecessary?
141.532 How does my system develop a Disinfection Profile and when must it begin?
141.533 What data must my system collect to calculate a Disinfection Profile?
141.534 How does my system use this data to calculate an inactivation ratio?
141.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?
141.536 My system has developed an inactivation ratio; what must we do now?

Disinfection Benchmark

141.540 Who has to develop a Disinfection Benchmark?
141.541 What are significant changes to disinfection practice?
141.542 What must my system do if we are considering a significant change to disinfection practices?
141.543 How is the Disinfection Benchmark calculated?
141.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

Combined Filter Effluent Requirements

141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?
141.551 What strengthened combined filter effluent turbidity limits must my system meet?
141.552 My system consists of ''alternative filtration'' and is required to conduct a demonstration. What is required of my system and how does the State establish my turbidity limits?
141.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

Individual Filter Turbidity Requirements

141.560 Is my system subject to individual filter turbidity requirements?
141.561 What happens if my system's turbidity monitoring equipment fails?
141.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?
141.563 What follow-up action is my system required to take based on continuous turbidity monitoring?
141.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

Reporting and Recordkeeping Requirements

141.570 What does subpart T require that my system report to the State?
141.571 What records does subpart T require my system to keep?

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

§ 141.500 General requirements.

The requirements of this subpart constitute national primary drinking water regulations. These regulations establish requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under subpart H of this part. The regulations in this subpart establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia,* viruses, heterotrophic plate count bacteria, *Legionella, Cryptosporidium* and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) At least 99 percent (2 log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems; and

(b) Compliance with the profiling and benchmark requirements in §§ 141.530 through 141.544.

§ 141.501 Who is subject to the requirements of subpart T?

You are subject to these requirements if your system:

(a) Is a public water system;

(b) Uses surface water or GWUDI as a source; and

(c) Serves fewer than 10,000 persons.

§ 141.502 When must my system comply with these requirements?

You must comply with these requirements in this subpart beginning January 14, 2005 except where otherwise noted.

§ 141.503 What does subpart T require?

There are seven requirements of this subpart, and you must comply with all requirements that are applicable to your system. These requirements are:

(a) You must cover any finished water reservoir that you began to construct on or after March 15, 2002 as described in §§ 141.510 and 141.511;

(b) If your system is an unfiltered system, you must comply with the updated watershed control requirements described in §§ 141.520–141.522;

(c) If your system is a community or non-transient non-community water systems you must develop a disinfection profile as described in §§ 141.530–141.536;

(d) If your system is considering making a significant change to its disinfection practices, you must develop a disinfection benchmark and consult with the State for approval of the change as described in §§ 141.540–141.544;

(e) If your system is a filtered system, you must comply with the combined filter effluent requirements as described in §§ 141.550–141.553;

(f) If your system is a filtered system that uses conventional or direct filtration, you must comply with the individual filter turbidity requirements as described in §§ 141.560–141.564; and

(g) You must comply with the applicable reporting and recordkeeping requirements as described in §§ 141.570 and 141.571.

Finished Water Reservoirs

§ 141.510 Is my system subject to the new finished water reservoir requirements?

All subpart H systems which serve fewer than 10,000 are subject to this requirement.

§ 141.511 What is required of new finished water reservoirs?

If your system begins construction of a finished water reservoir on or after March 15, 2002 the reservoir must be covered. Finished water reservoirs for which your system began construction prior to March 15, 2002 are not subject to this requirement.

Additional Watershed Control Requirements for Unfiltered Systems

§ 141.520 Is my system subject to the updated watershed control requirements?

If you are a subpart H system serving fewer than 10,000 persons which does

not provide filtration, you must continue to comply with all of the filtration avoidance criteria in § 141.71, as well as the additional watershed control requirements in § 141.521.

§ 141.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?

Your system must take any additional steps necessary to minimize the potential for contamination by *Cryptosporidium* oocysts in the source water. Your system's watershed control program must, for *Cryptosporidium*:

(a) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(b) Monitor the occurrence of activities which may have an adverse effect on source water quality.

§ 141.522 How does the State determine whether my system's watershed control requirements are adequate?

During an onsite inspection conducted under the provisions of § 141.71(b)(3), the State must determine whether your watershed control program is adequate to limit potential contamination by *Cryptosporidium* oocysts. The adequacy of the program must be based on the comprehensiveness of the watershed review; the effectiveness of your program to monitor and control detrimental activities occurring in the watershed; and the extent to which your system has maximized land ownership and/or controlled land use within the watershed.

Disinfection Profile

§ 141.530 What is a Disinfection Profile and who must develop one?

A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. If you are a subpart H community or non-transient non-community water systems which serves fewer than 10,000 persons, your system must develop a disinfection profile unless your State determines that your system's profile is unnecessary. Your State may approve the use of a more representative data set for disinfection profiling than the data set required under §§ 141.532–141.536.

§ 141.531 What criteria must a State use to determine that a profile is unnecessary?

States may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature, and at the point of maximum residence time in your distribution system.

§ 141.532 How does my system develop a Disinfection Profile and when must it begin?

A disinfection profile consists of three steps:

(a) First, your system must collect data for several parameters from the plant as discussed in § 141.533 over the course of 12 months. If your system serves between 500 and 9,999 persons you must begin to collect data no later than July 1, 2003. If your system serves fewer than 500 persons you must begin to collect data no later than January 1, 2004.

(b) Second, your system must use this data to calculate weekly log inactivation as discussed in §§ 141.534 and 141.535; and

(c) Third, your system must use these weekly log inactivations to develop a disinfection profile as specified in § 141.536.

§ 141.533 What data must my system collect to calculate a Disinfection Profile?

Your system must monitor the following parameters to determine the total log inactivation using the analytical methods in § 141.74 (a), once per week on the same calendar day, over 12 consecutive months:

(a) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(b) If your system uses chlorine, the pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(c) The disinfectant contact time(s) (''T'') during peak hourly flow; and

(d) The residual disinfectant concentration(s) (''C'') of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

§ 141.534 How does my system use this data to calculate an inactivation ratio?

Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

If your system * * *	Your system must determine * * *
(a) Uses only one point of disinfectant application.	(1) One inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow or (2) Successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, your system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine ($3CTcalc/CT_{99.9}$).
(b) Uses more than one point of disinfectant application before the first customer.	The ($CTcalc/CT_{99.9}$) value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow using the procedure specified in paragraph (a)(2) of this section.

§ 141.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses chloramines, ozone, or chlorine dioxide for primary disinfection, you must also calculate the logs of inactivation for viruses and develop an additional disinfection profile for viruses using methods approved by the State.

§ 141.536 My system has developed an inactivation ratio; what must we do now?

Each log inactivation serves as a data point in your disinfection profile. Your system will have obtained 52 measurements (one for every week of the year). This will allow your system and the State the opportunity to evaluate how microbial inactivation varied over the course of the year by looking at all 52 measurements (your Disinfection Profile). Your system must retain the Disinfection Profile data in graphic form, such as a spreadsheet, which must be available for review by the State as part of a sanitary survey. Your system must use this data to calculate a benchmark if you are considering changes to disinfection practices.

Disinfection Benchmark

§ 141.540 Who has to develop a Disinfection Benchmark?

If you are a subpart H system required to develop a disinfection profile under

§§ 141.530 through 141.536, your system must develop a Disinfection Benchmark if you decide to make a significant change to your disinfection practice. Your system must consult with the State for approval before you can implement a significant disinfection practice change.

§ 141.541 What are significant changes to disinfection practice?

Significant changes to disinfection practice include:

(a) Changes to the point of disinfection;

(b) Changes to the disinfectant(s) used in the treatment plant;

(c) Changes to the disinfection process; or

(d) Any other modification identified by the State.

§ 141.542 What must my system do if we are considering a significant change to disinfection practices?

If your system is considering a significant change to its disinfection practice, your system must calculate a disinfection benchmark(s) as described in §§ 141.543 and 141.544 and provide the benchmark(s) to your State. Your system may only make a significant disinfection practice change after consulting with the State for approval. Your system must submit the following information to the State as part of the consultation and approval process:

(a) A description of the proposed change;

(b) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark;

(c) An analysis of how the proposed change will affect the current levels of disinfection; and

(d) Any additional information requested by the State.

§ 141.543 How is the Disinfection Benchmark calculated?

If your system is making a significant change to its disinfection practice, it must calculate a disinfection benchmark using the procedure specified in the following table.

To calculate a disinfection benchmark your system must perform the following steps
Step 1: Using the data your system collected to develop the Disinfection Profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.
Step 2: Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

§ 141.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses chloramines, ozone or chlorine dioxide for primary disinfection your system must calculate the disinfection benchmark from the data your system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under § 141.543. This viral benchmark must be calculated in the same manner used to calculate the *Giardia lamblia* disinfection benchmark in § 141.543.

Combined Filter Effluent Requirements

§ 141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?

All subpart H systems which serve populations fewer than 10,000, are required to filter, and utilize filtration other than slow sand filtration or diatomaceous earth filtration must meet the combined filter effluent turbidity requirements of §§ 141.551–141.553 . If your system uses slow sand or diatomaceous earth filtration you are not required to meet the combined filter effluent turbidity limits of subpart T, but you must continue to meet the combined filter effluent turbidity limits in § 141.73.

§ 141.551 What strengthened combined filter effluent turbidity limits must my system meet?

Your system must meet two strengthened combined filter effluent turbidity limits.

(a) The first combined filter effluent turbidity limit is a ''95th percentile'' turbidity limit that your system must meet in at least 95 percent of the turbidity measurements taken each month. Measurements must continue to be taken as described in § 141.74(a) and (c). Monthly reporting must be completed according to § 141.570. The following table describes the required limits for specific filtration technologies.

If your system consists of * * *	Your 95th percentile turbidity value is * * *
(1) Conventional Filtration or Direct Filtration	0.3 NTU.
(2) All other ''Alternative'' Filtration	A value determined by the State (no to exceed 1 NTU) based on the demonstration described in § 141.552.

(b) The second combined filter effluent turbidity limit is a ''maximum'' turbidity limit which your system may at no time exceed during the month. Measurements must continue to be taken as described in § 141.74(a) and (c). Monthly reporting must be completed according to § 141.570. The following table describes the required limits for specific filtration technologies.

If your system consists of * * *	Your maximum turbidity value is * * *
(1) Conventional Filtration or Direct Filtration	1 NTU.
(2) All other ''Alternative''	A value determined by the State (not to exceed 5 NTU) based on the demonstration as described in § 141.552.

§ 141.552 My system consists of ''alternative filtration'' and is required to conduct a demonstration—what is required of my system and how does the State establish my turbidity limits?

(a) If your system consists of alternative filtration(filtration other than slow sand filtration, diatomaceous earth filtration, conventional filtration, or direct filtration) you are required to conduct a demonstration (see tables in § 141.551). Your system must demonstrate to the State, using pilot plant studies or other means, that your system's filtration, in combination with disinfection treatment, consistently achieves:

(1) 99 percent removal of *Cryptosporidium* oocysts;

(2) 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts; and

(3) 99.99 percent removal and/or inactivation of viruses.

(b) [Reserved]

§ 141.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

If your system practices lime softening, you may acidify representative combined filter effluent turbidity samples prior to analysis using a protocol approved by the State.

Individual Filter Turbidity Requirements

§ 141.560 Is my system subject to individual filter turbidity requirements?

If your system is a subpart H system serving fewer than 10,000 people and utilizing conventional filtration or direct filtration, you must conduct continuous monitoring of turbidity for each individual filter at your system. The following requirements apply to continuous turbidity monitoring:

(a) Monitoring must be conducted using an approved method in § 141.74(a);

(b) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer;

(c) Results of turbidity monitoring must be recorded at least every 15 minutes;

(d) Monthly reporting must be completed according to § 141.570; and

(e) Records must be maintained according to § 141.571.

§ 141.561 What happens if my system's turbidity monitoring equipment fails?

If there is a failure in the continuous turbidity monitoring equipment, your system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. Your system has 14 days to resume continuous monitoring before a violation is incurred.

§ 141.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?

Yes, if your system only consists of two or fewer filters, you may conduct continuous monitoring of combined filter effluent turbidity in lieu of individual filter effluent turbidity monitoring. Continuous monitoring must meet the same requirements set forth in § 141.560(a) through (d) and § 141.561.

§ 141.563 What follow-up action is my system required to take based on continuous turbidity monitoring?

Follow-up action is required according to the following tables:

If * * *	Your system must * * *
(a) The turbidity of an individual filter (or the turbidity of combined filter effluent (CFE) for systems with 2 filters that monitor CFE in lieu of individual filters) exceeds 1.0 NTU in two consecutive recordings 15 minutes apart.	Report to the State by the 10th of the following month and include the filter number(s), corresponding date(s), turbidity value(s) which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s).

If a system was required to report to the State * * *	Your system must * * *
(b) For three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters).	Conduct a self-assessment of the filter(s) within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (c) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.
(c) For two months in a row and turbidity exceeded 2.0 BTU in 2 consecutive recordings 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters).	Arrange to have a comprehensive performance evaluation (CPE) conducted by the State or a third party approved by the State not later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE has been completed by the State or a third party approved by the State within the 12 prior months or the system and State are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the State no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

§ 141.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

If your system utilizes lime softening, you may apply to the State for alternative turbidity exceedance levels for the levels specified in the table in § 141.563. You must be able to demonstrate to the State that higher turbidity levels are due to lime carryover only, and not due to degraded filter performance.

Reporting and Recordkeeping Requirements

§ 141.570 What does subpart T require that my system report to the State?

This subpart T requires your system to report several items to the State. The following table describes the items which must be reported and the

frequency of reporting. Your system is required to report the information described in the following table, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of information to report	Frequency
(a) Combined Filter Effluent Requirements. (§§ 141.550–141.553)	(1) The total number of filtered water turbidity measurements taken during the month.	By the 10th of the following month.
	(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to your system's required 95th percentile limit.	By the 10th of the following month.
	(3) The date and value of any turbidity measurements taken during the month which exceed the maximum turbidity value for your filtration system.	By the 10th of the following month.
(b) Individual Turbidity Requirements. (§§ 141.560–141.564)	(1) That your system conducted individual filter turbidity monitoring during the month.	By the 10th of the following month.
	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, but only if 2 consecutive measurements exceeded 1.0 NTU.	By the 10th of the following month.
	(3) If a self-assessment is required, the date that it was triggered and the date that it was completed.	By the 10th of the following month (or 14 days after the self-assessment was triggered only if the self-assessment was triggered during the last four days of the month)
	(4) If a CPE is required, that the CPE is required and the date that it was triggered.	By the 10th of the following month.
	(5) Copy of completed CPE report	Within 120 days after the CPE was triggered.
(c) Disinfection Profiling (§§ 141.530–141.536)	(1) Results of optional monitoring which show TTHM levels <0.064 mg/l and HAA5 levels <0.048 mg/l (Only if your system wishes to forgo profiling) or that your system has begun disinfection profiling.	(i) For systems serving 500–9,999 by July 1, 2003; (ii) For systems serving fewer than 500 by January 1, 2004.
(d) Disinfection Benchmarking (§§ 141.540–141.544)	(1) A description of the proposed change in disinfection, your system's disinfection profile for Giardia lamblia (and, if necessary, viruses) and disinfection benchmark, and an analysis of how the proposed change will affect the current levels of disinfection.	Anytime your system is considering a significant change to its disinfection practice.

§ 141.571 What records does subpart T require my system to keep?

Your system must keep several types of records based on the requirements of subpart T, in addition to recordkeeping requirements under § 141.75. The following table describes the necessary records, the length of time these records must be kept, and for which requirement the records pertain. Your system is required to maintain records described in this table, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of necessary records	Duration of time records must be kept
(a) Individual Filter Turbidity Requirements (§§ 141.560–141.564)	Results of individual filter monitoring	At least 3 years.
(b) Disinfection Profiling (§§ 141.530–141.536)	Results of Profile (including raw data and analysis)	Indefinitely.
(c) Disinfection Benchmarking (§§ 141.540–141.544)	Benchmark (including raw data and analysis)	Indefinitely.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

15. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

16. Section 142.14 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(ii) introductory text, and (a)(7) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(3) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71, 141.73, 141.173 and 141.175, 141.550–141.553 and 141.560–141.564 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13 of this chapter.

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of §§ 141.75, 141.175, and 141.570, of this chapter must be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis

under provisions of part 141, subpart H, subpart P, or subpart T of this chapter, must be made in writing and kept by the State.

* * * * *

(7) Any decisions made pursuant to the provisions of part 141, subpart P or subpart T of this chapter.

(i) Records of systems consulting with the State concerning a modification to disinfection practice under §§ 141.170(d), 141.172(c), and 141.542 of this chapter, including the status of the consultation.

(ii) Records of decisions that a system using alternative filtration technologies, as allowed under §§ 141.173(b) and § 141.552 of this chapter, can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised. The State must provide a copy of the decision to the system.

(iii) Records of systems required to do filter self-assessment, CPE, or CCP under the requirements of §§ 141.175 and 141.563 of this chapter.

* * * * *

17. Section 142.16 is amended by revising paragraph (g) introductory text and adding paragraph (j) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(g) Requirements for States to adopt 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People, must contain the information specified in this paragraph:

* * * * *

(j) Requirements for States to adopt 40 CFR part 141, Subpart T Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart T Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have rules or other authority to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, the performance improvement phase of the Composite Correction Program (CCP). The State must determine whether a CTA must be conducted based on results of a CPE which indicate the potential for improved performance, and a finding by the State that the system is able to receive and implement technical assistance provided through the CTA. A CPE is a thorough review and analysis of a system's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. During the CTA phase, the system must identify and systematically address factors limiting performance. The CTA is a combination of utilizing CPE results as a basis for follow-up, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.*

(i) Section 141.530–141.536—How the State will approve a more representative data set for optional TTHM and HAA5 monitoring and profiling.

(ii) Section 141.536 of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, ozone, or chlorine dioxide for primary disinfection.

(iii) Section 141.542 of this chapter—How the State will consult with the system and approve significant changes to disinfection practices.

(iv) Section 141.552 of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

[FR Doc. 02–409 Filed 1–11–02; 8:45 am]

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Federal Register

Monday,
January 14, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Miscellaneous Flight Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11271; Notice No. 02–01]

RIN 2120–AH39

Miscellaneous Flight Requirements

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 miscellaneous flight requirements. 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 March 15, 2002.

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–2002–11271*, 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–2002–11271*.'' 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: Don Stimson, FAA, Airplane & 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:

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 accepted the draft NPRM as proposed.

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 five sections of the regulations concerning transport category airplane miscellaneous flight requirements to harmonize the associated standards with those of JAR–25. The standards addressed in this proposal are all classified as Category 1 under the fast track harmonization program. Since the FAA agrees with the recommendations received from ARAC, this proposal is consistent with the ARAC recommendations. The five proposed changes are described separately below.

Change 1: Section 25.111(c)(4), ''Takeoff Path''

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement only allows certain routine crew actions to be made before the airplane reaches a height of 400 feet above the takeoff surface. Simulation studies and accident investigations have shown that during periods of high

workload, such as after an engine failure during takeoff, the crew might not take actions necessary to maintain the safe flight of the airplane. This revision would require that certain actions be automatic before the airplane reaches a height of 400 feet in order to receive credit for the effect of the action on the flight path.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR Section 25.111(c)(4) is:

Section 25.111 Takeoff path.

* * * (c)(4) Except for gear retraction and propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

• The current text of JAR–25.111(c)(4), Change 15, Amendment 25/96/1, is:

JAR–25.111 Take-Off Path

* * * (c)(4) Except for gear retraction and automatic propeller feathering, the aeroplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the aeroplane is 400 ft above the takeoff surface.

What Are the Differences In the Standards and What Do Those Differences Result In?

Although both part 25 and the JAR address the effect of propeller feathering on the flight path before the airplane is 400 feet above the takeoff surface, the JAR standard does not allow manual propeller feathering until the airplane is at least 400 feet above the takeoff surface. Although current FAA policy has been in accordance with the JAR standard, the rule language was not clear. Only automatic propeller feathering has been accepted as complying with the intent of § 25.111(c)(4).

What, If Any, Are the Differences In the Means of Compliance?

There are no differences between part 25 and JAR–25 in the means of compliance.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising part 25 to adopt the text of JAR–25.111(c)(4) as new § 25.111(c)(4). The proposed action would codify current FAA policy by incorporating the text of the JAR standard.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by codifying current FAA policy to the JAR.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety relative to the current regulations, considering the application of FAA policy concerning propeller feathering below a height of 400 feet.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to the current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed enveloping action to be the most appropriate way to maintain safety.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. The proposed change, however, would not have an effect because it codifies current practices and policy.

Is Existing FAA Advisory Material Adequate?

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 § 25.111(c)(4). Public comments concerning the proposed revision to AC 25–7A are invited by separate notice, following this NPRM.

Change 2: Section 25.147(c)(2), ''Directional and Lateral Control''

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement addresses controllability in the one-engine-inoperative condition. It requires that transport category airplanes be controllable and maneuverable with the critical engine inoperative.

What Are the Current 14 CFR and JAR Standards?

• There is no comparable part 25 section.

• The current text of JAR–25.147(c)(2), Change 15, Amendment 25/96/1, is:

JAR–25.147 Directional and Lateral Control

* * * (c)(2) With the critical engine inoperative, roll response must allow normal manoeuvres. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative for climb, cruise, descent and landing approach, to provide a peak roll rate necessary for safety without excessive control forces or travel. (See ACJ 25.147(c)(2).)

What Are the Differences in the Standards and What Do Those Differences Result In?

Section 25.147 of part 25 does not address roll rate response. The JAR 25.147(c)(2), however, addresses roll rate response. Additional flight testing is needed to show compliance with the JAR requirement. Since industry practice is to comply with both standards, it is difficult to determine whether there are any resulting design differences. It is not known if the differences in the standards would have resulted in any design differences had current industry practice not been to comply with both standards.

What, If Any, Are the Differences in the Means of Compliance?

Section 25.147 of part 25 does not prescribe any roll rate requirements. Any evaluation of roll rate would be only of a general qualitative nature relative to the ease of performing the banked turns required by § 25.147(c). Also, the part 25 evaluation is only performed at 1.4 V_S.

What Is the Proposed Action?

The proposed action would add the additional JAR–25 requirement to part 25 as a new § 25.147(d). However, the word ''peak,'' as used in JAR 25.147(c)(2), would not be included in this proposal in reference to the roll rate that must be available. The FAA considers the use of the word ''peak'' too constraining and unclear. For example, demonstrating an ''average'' roll rate capability may not be acceptable for showing compliance with a requirement for a ''peak'' roll rate. Also, it is difficult to determine if a peak roll rate is the maximum sustainable roll rate, or is merely a short transient condition that could result from unique or unusual piloting techniques.

Also, the reference to the climb, cruise, descent, and landing approach flight phases currently contained in JAR 25.147(c)(2) would be removed. The FAA considers this proposed requirement applicable to all flight

phases with one engine inoperative, including takeoff and initial climb, which are not referenced in the current JAR 25.147(c)(2). By removing the reference to specific flight phases, the proposed requirement would be applicable to all flight phases with one engine inoperative.

Additionally, § 25.147(d) and (e) would be redesignated as § 25.147(e) and (f), respectively. The JAA plans to harmonize the JAR accordingly to correspond to these proposals.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue for all phases of flight with one engine inoperative in the same manner, but would add a requirement specifically addressing roll rate response.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety since it adds a requirement that is not currently in § 25.147.

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 proposed enveloping action to be the most appropriate way to maintain safety.

Who Would Be Affected by the Proposed Change?

The proposed standard would affect manufacturers of transport category airplanes. This change would not affect operators since it would have no effect on the operating limitations or procedures.

Is Existing FAA Advisory Material Adequate?

The FAA considers that adding the existing JAA ACJ material to AC 25–7A would be necessary to address the means of compliance for the proposed addition to part 25. The FAA plans to issue a revision to AC 25–7A to add this material. Public comments concerning this proposed revision are invited by separate notice, following this NPRM.

Change 3: Section 25.161(c)(2), ''Trim (Longitudinal)''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Transport category airplanes are required to maintain longitudinal, lateral, and directional trim under certain conditions of flight. This requirement specifies conditions under which longitudinal trim must be maintained. The capability to trim out control forces is both a pilot workload and a flight path precision issue. An out-of-trim airplane can be fatiguing to fly and can make maintaining the desired flight path more difficult.

What Are the Current 14 CFR and JAR Standards?

- The current text of 14 CFR Section 25.161(c)(2) is:

Section 25.161 Trim.

(c) Longitudinal trim. The airplane must maintain longitudinal trim during—

* * * * *

* * * (c)(2) A glide with power off at a speed not more than 1.4 V^{S1}, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight; and * * *

- The current text of JAR 25.161(c)(2), Change 14, is:

JAR–25.161 Trim

(c) Longitudinal trim. The aeroplane must maintain longitudinal trim during—

* * * * *

* * * (c)(2) Either a glide with power off at a speed not more than 1.4 V_{S1}, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3° glidepath, whichever is the most severe, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, the most unfavourable centre of gravity position approved for landing with the maximum landing weight, and the most unfavourable centre of gravity position approved for landing regardless of weight; and * * *

What Are the Differences in the Standards and What Do Those Differences Result In?

In addition to the power-off glide condition specified by part 25, the JAR requires longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath. For airplanes where this condition is more stringent than the power-off glide condition, a design difference may result. Also, additional flight testing must be performed to demonstrate compliance with the JAR.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance.

What Is the Proposed Action?

The proposed action would revise § 25.161(c)(2) to adopt the more stringent JAR standard. The requirement to demonstrate compliance at ''the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight'' would be simplified to refer to ''the most unfavorable combination of center of gravity position and weight approved for landing.'' This proposed change would not affect the safety intent of the requirement. The longitudinal trim requirement would continue to apply to the most critical combination of landing weight and center of gravity position. If, due to the characteristics of the approved center of gravity envelope, the most critical combination of landing weight and center of gravity position does not coincide with the maximum landing weight, there would not be any need to demonstrate compliance at the maximum landing weight condition.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner, but would add a requirement to ensure that transport category airplanes maintain longitudinal trim in a power-on approach condition.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety for those transport category airplanes for which the power-on approach condition is more critical for maintaining longitudinal trim than the power-off glide condition.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practice.

Who Would Be Affected by the Proposed Change?

The proposed change would 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?

There is no specific advisory material for either part 25 or the JAR. The FAA considers developing new advisory material to be unnecessary.

Change 4: Section § 25.161(e), ''Trim (Four or More Engines)''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Transport category airplanes are required to maintain longitudinal, lateral, and directional trim under certain conditions of flight. This requirement specifies additional conditions applicable to airplanes with four or more engines under which longitudinal, directional, and lateral trim must be maintained. The capability to trim out control forces is both a pilot workload and capability to maintain a desired flight path issue. An out-of-trim airplane can be fatiguing to fly and can make maintaining the desired flight path more difficult.

What Are the Current 14 CFR and JAR Standards?

- The current text of 14 CFR 25.161(e) is:

Section 25.161 Trim.

* * * (e) Airplanes with four or more engines. Each airplane with four or more engines must maintain trim in rectilinear flight—

(1) At the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the rate of climb;

(2) With the most unfavorable center of gravity position; and

(3) At the weight at which the two-engine-inoperative climb is equal to at least 0.013 $V_{SO}2$ at an altitude of 5,000 feet.

- The current text of JAR–25.161(e), Change 15, Amendment 25/96/1, is:

JAR–25.161 Trim

* * *(e) Aeroplanes with four or more engines. Each aeroplane with four or more engines must maintain trim in rectilinear flight—

(1) At the climb speed, configuration, and power required by JAR 25.123(a) for the purpose of establishing gradient of climb; and

(2) With the most unfavourable centre of gravity position.

(3) Not required for JAR–25.

What Are the Differences in the Standards and What Do Those Differences Result in?

Part 25 specifies a single weight at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. The JAR–25 standard, which does not contain this provision, applies at all weights. Therefore, the JAR–25 standard is more stringent.

The weight requirement in part 25 originated in the U.S. Civil Air Regulations (CAR) part 4b, which specified climb rates proportional to the square of the stall speed. Climb rates were specified in this manner because it was assumed that the level of safety associated with an emergency landing would depend on the kinetic energy of the airplane, which in turn is proportional to the mass times the velocity squared. For equivalent safety, it was reasoned that excess power, expressed in terms of rate of climb, should be proportional to the stall speed squared. Since the climb requirements of part 25 are now expressed in terms of climb gradient rather than rates of climb, the manner in which the weight for compliance is defined in § 25.161(e)(3) is an historical artifact and out of step with the rest of part 25.

What, if Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance.

What Is the Proposed Action?

The proposed action would reformat this section into one paragraph with no sub-paragraphs. The wording currently in § 25.161(e)(1) and JAR 25.161(e)(1) would be moved to § 25.161(e) and updated to reflect current industry practice in reference to the en route flight path configurations of § 25.123(a) and JAR 25.123(a). The part 25 wording originated in CAR part 4b when the equivalent requirement to § 25.123(a) for two-engine-inoperative climb performance specified a minimum rate of climb that an airplane must be capable of achieving. In the current part 25 and JAR–25 standards, § 25.123(a) and JAR 25.123(a) require the determination of the en route flight paths, rather than a minimum rate of climb or climb gradient. To be consistent with the current § 25.123(a) and JAR 25.123(a), the proposed § 25.161(e) would refer to en route flight paths rather than either rate of climb (as in current part 25) or gradient of climb (as in current JAR–25).

In addition, the word ''also'' has been added to the lead-in sentence of the proposed standard to clarify that this is an additional requirement for airplanes with four or more engines. The requirements of § 25.161(d) and JAR 25.161(d) remain applicable for these airplanes.

The wording of § 25.161(e)(2) would be incorporated into the proposed § 25.161(e). Section 25.161(e)(3) would be removed. Its removal would result in the proposed § 25.161(e) requirements being applicable at all weights as in the current JAR 25.161(e).

How Does This Proposed Standard Address the Underlying Safety Issue?

This proposed standard would continue to address the underlying safety issue in the same manner. However, it also would expand the conditions under which airplanes with four or more engines must be able to maintain longitudinal, lateral, and directional trim by making the current standard applicable at all relevant gross weight conditions.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety relative to the current part 25. It expands the conditions under which an airplane with four or more engines must be able to maintain longitudinal, lateral, and directional trim.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practice.

Who Would Be Affected by the Proposed Change?

The proposed change would 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?

There is no specific advisory material for either part 25 or JAR–25. The FAA considers developing new advisory material unnecessary.

Change 5: Section 25.175(d), ''Static Longitudinal Stability''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Section 25.175 and JAR 25.175 contain the conditions under which static longitudinal stability must be demonstrated for transport category airplanes. Static longitudinal stability is required by part 25 for the following reasons:

1. To provide additional speed change cues to the pilot through control force changes.
2. To ensure that short periods of unattended operation do not result in any significant changes in attitude, airspeed, or load factor.
3. To provide predictable pitch response.
4. To provide acceptable level of pilot attention (workload) to attain and maintain trim speed and altitude.
5. To provide gust stability.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR 25.175(d) is:

Section 25.175 Demonstration of Static Longitudinal Stability.

* * * (d) Landing. The stick force curve must have a stable slope, and the stick force may not exceed 80 pounds, at speeds between 1.1 VS0 and 1.8 VS0 with—

(1) Wing flaps in the landing position;
(2) Landing gear extended;
(3) Maximum landing weight;
(4) Power or thrust off on the engines; and
(5) The airplane trimmed at 1.4 V_{S0} with power or thrust off.

• The current text of JAR–25.175(d), Change 14, is:

JAR 25.175 Demonstration of Static Longitudinal stability

* * * (d) Landing. The stick force curve must have a stable slope and the stick force may not exceed 80 pounds at speeds between 1.1 V_{S0} and 1.8 V_{S0} with—

(1) Wing flaps in the landing position;
(2) Landing gear extended;
(3) Maximum landing weight;
(4) The aeroplane trimmed at 1.4 VS0 with
(i) Power or thrust off, and
(ii) Power or thrust for level flight.

What Are the Differences in the Standards and What Do Those Differences Result in?

In addition to the part 25 condition of power—or thrust-off, JAR–25 requires the stick force criteria to be met at the power or thrust for level flight. This additional condition requires additional flight test demonstrations to show compliance, and may influence the design of airplanes for which the application of power has a significant destabilizing effect.

What, If Any, Are the Differences in the Means of Compliance?

Except for the additional power-on condition required by the JAR, there are no differences in the means of compliance for part 25 and JAR–25.

What Is the Proposed Action?

The proposed action would revise part 25 by adopting the more stringent text of JAR 25.175(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner, but would add a requirement to ensure that transport category airplanes have adequate static longitudinal stability in a power-on approach condition.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety for those transport category airplanes for which the power-on condition is more critical in terms of static longitudinal stability than the power-off condition.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and the JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practices. Using the less stringent part 25 standard was also considered; however, there are normally occurring situations for which level flight in the landing configuration may be relevant. These situations include stepdown fixes on nonprecision approaches and extending the flaps and landing gear to the landing configuration when the glide slope becomes active on a precision approach, but before the glide slope intercept point.

Who Would Be Affected by the Proposed Change?

The proposed change would 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 has not considered another option. The FAA considers that current advisory material is adequate.

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 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.''

Change 1: Section 25.111(c)(4), ''Takeoff Path'':

Current industry practice covering aircraft crew actions concerning the takeoff path already complies with the more stringent JAR requirements. The JAR 25.111(c)(4) requirement allows only certain routine crew actions to be made before the airplane reaches a height 400 feet above the takeoff surface.

This proposal would revise the FAA requirements for propeller feathering before the airplane is at least 400 feet above the takeoff surface by adding the following ''more stringent'' requirements of the JAR standards to include:

Section 25.111 Take-off path.

* * * (c)(4) Except for gear retraction and *automatic* propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

Concerning the impact of complying with the proposed standard, the ARAC working group states there is no additional cost associated with complying with the proposed standard as it represents current practices and policy.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 2: Section 25.147(c)(2), ''Directional and Lateral Control'':

Current industry practice covering pilot techniques concerning controllability in the one-engine inoperative condition already complies with the more stringent JAR requirements. The JAR 25.147(c)(2) standard is more stringent than § 25.147(c)(2) since part 25 does not prescribe any roll rate requirements when one engine is inoperative.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.147(c)(2). The new § 25.147(c)(2) would require roll rate response to be evaluated and found adequate for all speeds likely to be used with one engine inoperative. The word ''peak,'' as used in JAR 25.147(c)(2), would not be included in this proposal in reference to the roll rate since the FAA considers its use too constraining and unclear. The ARAC working group recommends the words ''for climb, cruise, descent and landing approach'' be removed so that this requirement would apply to all flight conditions. The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 3: Section 25.161(c)(2), ''Trim (Longitudinal)'':

Current industry practice covering pilot techniques concerning conditions under which longitudinal trim must be maintained already complies with the more stringent JAR requirements. The JAR 25.161(c)(2) standard is more stringent than § 25.161(c)(2) since part 25 does not require longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.161(c)(2). The new § 25.161(c)(2) would require longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath. In addition, the requirement to demonstrate compliance at ''the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight'' would be simplified to refer to ''the most unfavorable combination of center of gravity position and weight approved for landing.'' The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 4: Section 25.161(e), ''Trim (Four or More Engines)'':

Current industry practice covering pilot techniques concerning conditions under which longitudinal, directional, and lateral trim on airplanes with four or more engines must be maintained is already complying with the more stringent JAR requirements. The § 25.161(c)(2) standard specifies a single weight at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. The JAR 25.161(c)(2) standard, which does not contain this provision, applies at all weights.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.161(e). The new § 25.161(e) would apply to all weights at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. In addition, the ARAC working group states that to be consistent with § 25.123(a) and JAR 25.123(a), the proposed harmonized § 25.161(e)(1) and JAR 25.161(e)(1) should refer to en route flight paths rather that either rate of climb (as in the current part 25) or gradient of climb (as in the current JAR). The ARAC and FAA consider that since the climb requirements of part 25 are now expressed in terms of climb gradient rather that rates of climb, the manner in which the weight for compliance is defined in § 25.161(e)(3) is an historical artifact and out of step with the rest of part 25. Lastly, ARAC finds that the word ''also'' should be added to the lead-in sentence of the proposed standard to clarify that this is an additional requirement for airplanes with four or more engines.

Concerning the impact of complying with the proposed standard, the ARAC working group states the cost of complying with the proposed standard is none as it codifies current practices and policy.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 5: Section 25.175(d), ''Static Longitudinal Stability'':

Current industry practice covering pilot techniques concerning conditions under which static longitudinal stability must be demonstrated for transport category airplanes already complies with the more stringent JAR requirements. The JAR 25.175(d) would require the stick force criteria to be met at the power or thrust for level flight in addition to the part 25 condition of power or thrust off.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.175(d). The new § 25.175(d) would add a requirement to ensure that transport category airplanes have adequate static longitudinal stability in a power-on approach condition. The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

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 has 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.

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 § 25.111 by revising paragraph (c)(4) to read as follows:

§ 25.111 Takeoff path.

* * * * *

(c) * * *

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

* * * * *

3. Amend § 25.147 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding new paragraph (d) to read as follows:

§ 25.147 Directional and lateral control.

* * * * *

(d) *Lateral control; roll capability.* With the critical engine inoperative, roll response must allow normal maneuvers. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative, to provide a roll rate necessary for safety without excessive control forces or travel.

* * * * *

4. Amend § 25.161 by revising paragraph (c)(2), and by revising paragraph (e) as follows:

§ 25.161 Trim.

* * * * *

(c) * * *

(2) Either a glide with power off at a speed not more than 1.4VS1, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3 degree glidepath, whichever is the most severe, with the landing gear extended, the wing flaps retracted and extended, and with the most unfavorable combination of center of gravity position and weight approved for landing; and

* * * * *

(e) *Airplanes with four or more engines.* Each airplane with four or more engines must also maintain trim in rectilinear flight with the most unfavorable center of gravity and at the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the en route flight paths with two engines inoperative.

5. Amend § 25.175 by revising the text of paragraph (d)(4) to read as follows:

§ 25.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(4) The airplane trimmed at $1.4V_{SO}$ with—

(i) Power or thrust off, and

(ii) Power or thrust for level flight.

* * * * *

Issued in Renton, Washington, on December 18, 2001.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification.

[FR Doc. 02–655 Filed 1–11–02; 8:45 am]

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Federal Register

Monday,
January 14, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Miscellaneous Flight Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11271; Notice No. 02–01]

RIN 2120–AH39

Miscellaneous Flight Requirements

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 miscellaneous flight requirements. 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 March 15, 2002.

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–2002–11271*, 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–2002–11271*.'' 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: Don Stimson, FAA, Airplane & 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:

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 accepted the draft NPRM as proposed.

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 five sections of the regulations concerning transport category airplane miscellaneous flight requirements to harmonize the associated standards with those of JAR–25. The standards addressed in this proposal are all classified as Category 1 under the fast track harmonization program. Since the FAA agrees with the recommendations received from ARAC, this proposal is consistent with the ARAC recommendations. The five proposed changes are described separately below.

Change 1: Section 25.111(c)(4), ''Takeoff Path''

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement only allows certain routine crew actions to be made before the airplane reaches a height of 400 feet above the takeoff surface. Simulation studies and accident investigations have shown that during periods of high

workload, such as after an engine failure during takeoff, the crew might not take actions necessary to maintain the safe flight of the airplane. This revision would require that certain actions be automatic before the airplane reaches a height of 400 feet in order to receive credit for the effect of the action on the flight path.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR Section 25.111(c)(4) is:

Section 25.111 Takeoff path.

* * * (c)(4) Except for gear retraction and propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

• The current text of JAR–25.111(c)(4), Change 15, Amendment 25/96/1, is:

JAR–25.111 Take-Off Path

* * * (c)(4) Except for gear retraction and automatic propeller feathering, the aeroplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the aeroplane is 400 ft above the takeoff surface.

What Are the Differences In the Standards and What Do Those Differences Result In?

Although both part 25 and the JAR address the effect of propeller feathering on the flight path before the airplane is 400 feet above the takeoff surface, the JAR standard does not allow manual propeller feathering until the airplane is at least 400 feet above the takeoff surface. Although current FAA policy has been in accordance with the JAR standard, the rule language was not clear. Only automatic propeller feathering has been accepted as complying with the intent of § 25.111(c)(4).

What, If Any, Are the Differences In the Means of Compliance?

There are no differences between part 25 and JAR–25 in the means of compliance.

What Is the Proposed Action?

The FAA proposes to harmonize the regulations by revising part 25 to adopt the text of JAR–25.111(c)(4) as new § 25.111(c)(4). The proposed action would codify current FAA policy by incorporating the text of the JAR standard.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner by codifying current FAA policy to the JAR.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety relative to the current regulations, considering the application of FAA policy concerning propeller feathering below a height of 400 feet.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the same level of safety relative to the current industry practice.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed enveloping action to be the most appropriate way to maintain safety.

Who Would Be Affected by the Proposed Change?

Manufacturers and operators of transport category airplanes could be affected by the proposed change. The proposed change, however, would not have an effect because it codifies current practices and policy.

Is Existing FAA Advisory Material Adequate?

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 § 25.111(c)(4). Public comments concerning the proposed revision to AC 25–7A are invited by separate notice, following this NPRM.

Change 2: Section 25.147(c)(2), ''Directional and Lateral Control''

What Is the Underlying Safety Issue Addressed by the Current Standards?

This requirement addresses controllability in the one-engine-inoperative condition. It requires that transport category airplanes be controllable and maneuverable with the critical engine inoperative.

What Are the Current 14 CFR and JAR Standards?

• There is no comparable part 25 section.

• The current text of JAR–25.147(c)(2), Change 15, Amendment 25/96/1, is:

JAR–25.147 Directional and Lateral Control

* * * (c)(2) With the critical engine inoperative, roll response must allow normal manoeuvres. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative for climb, cruise, descent and landing approach, to provide a peak roll rate necessary for safety without excessive control forces or travel. (See ACJ 25.147(c)(2).)

What Are the Differences in the Standards and What Do Those Differences Result In?

Section 25.147 of part 25 does not address roll rate response. The JAR 25.147(c)(2), however, addresses roll rate response. Additional flight testing is needed to show compliance with the JAR requirement. Since industry practice is to comply with both standards, it is difficult to determine whether there are any resulting design differences. It is not known if the differences in the standards would have resulted in any design differences had current industry practice not been to comply with both standards.

What, If Any, Are the Differences in the Means of Compliance?

Section 25.147 of part 25 does not prescribe any roll rate requirements. Any evaluation of roll rate would be only of a general qualitative nature relative to the ease of performing the banked turns required by § 25.147(c). Also, the part 25 evaluation is only performed at 1.4 V_S.

What Is the Proposed Action?

The proposed action would add the additional JAR–25 requirement to part 25 as a new § 25.147(d). However, the word ''peak,'' as used in JAR 25.147(c)(2), would not be included in this proposal in reference to the roll rate that must be available. The FAA considers the use of the word ''peak'' too constraining and unclear. For example, demonstrating an ''average'' roll rate capability may not be acceptable for showing compliance with a requirement for a ''peak'' roll rate. Also, it is difficult to determine if a peak roll rate is the maximum sustainable roll rate, or is merely a short transient condition that could result from unique or unusual piloting techniques.

Also, the reference to the climb, cruise, descent, and landing approach flight phases currently contained in JAR 25.147(c)(2) would be removed. The FAA considers this proposed requirement applicable to all flight

phases with one engine inoperative, including takeoff and initial climb, which are not referenced in the current JAR 25.147(c)(2). By removing the reference to specific flight phases, the proposed requirement would be applicable to all flight phases with one engine inoperative.

Additionally, § 25.147(d) and (e) would be redesignated as § 25.147(e) and (f), respectively. The JAA plans to harmonize the JAR accordingly to correspond to these proposals.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue for all phases of flight with one engine inoperative in the same manner, but would add a requirement specifically addressing roll rate response.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety since it adds a requirement that is not currently in § 25.147.

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 proposed enveloping action to be the most appropriate way to maintain safety.

Who Would Be Affected by the Proposed Change?

The proposed standard would affect manufacturers of transport category airplanes. This change would not affect operators since it would have no effect on the operating limitations or procedures.

Is Existing FAA Advisory Material Adequate?

The FAA considers that adding the existing JAA ACJ material to AC 25–7A would be necessary to address the means of compliance for the proposed addition to part 25. The FAA plans to issue a revision to AC 25–7A to add this material. Public comments concerning this proposed revision are invited by separate notice, following this NPRM.

Change 3: Section 25.161(c)(2), ''Trim (Longitudinal)''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Transport category airplanes are required to maintain longitudinal, lateral, and directional trim under certain conditions of flight. This requirement specifies conditions under which longitudinal trim must be maintained. The capability to trim out control forces is both a pilot workload and a flight path precision issue. An out-of-trim airplane can be fatiguing to fly and can make maintaining the desired flight path more difficult.

What Are the Current 14 CFR and JAR Standards?

- The current text of 14 CFR Section 25.161(c)(2) is:

Section 25.161 Trim.

(c) Longitudinal trim. The airplane must maintain longitudinal trim during—

* * * * *

* * * (c)(2) A glide with power off at a speed not more than 1.4 V^{S1}, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight; and * * *

- The current text of JAR 25.161(c)(2), Change 14, is:

JAR–25.161 Trim

(c) Longitudinal trim. The aeroplane must maintain longitudinal trim during—

* * * * *

* * * (c)(2) Either a glide with power off at a speed not more than 1.4 V_{S1}, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3° glidepath, whichever is the most severe, with the landing gear extended, the wing flaps (i) retracted and (ii) extended, the most unfavourable centre of gravity position approved for landing with the maximum landing weight, and the most unfavourable centre of gravity position approved for landing regardless of weight; and * * *

What Are the Differences in the Standards and What Do Those Differences Result In?

In addition to the power-off glide condition specified by part 25, the JAR requires longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath. For airplanes where this condition is more stringent than the power-off glide condition, a design difference may result. Also, additional flight testing must be performed to demonstrate compliance with the JAR.

What, If Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance.

What Is the Proposed Action?

The proposed action would revise § 25.161(c)(2) to adopt the more stringent JAR standard. The requirement to demonstrate compliance at ''the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight'' would be simplified to refer to ''the most unfavorable combination of center of gravity position and weight approved for landing.'' This proposed change would not affect the safety intent of the requirement. The longitudinal trim requirement would continue to apply to the most critical combination of landing weight and center of gravity position. If, due to the characteristics of the approved center of gravity envelope, the most critical combination of landing weight and center of gravity position does not coincide with the maximum landing weight, there would not be any need to demonstrate compliance at the maximum landing weight condition.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner, but would add a requirement to ensure that transport category airplanes maintain longitudinal trim in a power-on approach condition.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety for those transport category airplanes for which the power-on approach condition is more critical for maintaining longitudinal trim than the power-off glide condition.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practice.

Who Would Be Affected by the Proposed Change?

The proposed change would 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?

There is no specific advisory material for either part 25 or the JAR. The FAA considers developing new advisory material to be unnecessary.

Change 4: Section § 25.161(e), ''Trim (Four or More Engines)''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Transport category airplanes are required to maintain longitudinal, lateral, and directional trim under certain conditions of flight. This requirement specifies additional conditions applicable to airplanes with four or more engines under which longitudinal, directional, and lateral trim must be maintained. The capability to trim out control forces is both a pilot workload and capability to maintain a desired flight path issue. An out-of-trim airplane can be fatiguing to fly and can make maintaining the desired flight path more difficult.

What Are the Current 14 CFR and JAR Standards?

- The current text of 14 CFR 25.161(e) is:

Section 25.161 Trim.

* * * (e) Airplanes with four or more engines. Each airplane with four or more engines must maintain trim in rectilinear flight—

(1) At the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the rate of climb;

(2) With the most unfavorable center of gravity position; and

(3) At the weight at which the two-engine-inoperative climb is equal to at least 0.013 $V_{SO}2$ at an altitude of 5,000 feet.

- The current text of JAR–25.161(e), Change 15, Amendment 25/96/1, is:

JAR–25.161 Trim

* * *(e) Aeroplanes with four or more engines. Each aeroplane with four or more engines must maintain trim in rectilinear flight—

(1) At the climb speed, configuration, and power required by JAR 25.123(a) for the purpose of establishing gradient of climb; and

(2) With the most unfavourable centre of gravity position.

(3) Not required for JAR–25.

What Are the Differences in the Standards and What Do Those Differences Result in?

Part 25 specifies a single weight at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. The JAR–25 standard, which does not contain this provision, applies at all weights. Therefore, the JAR–25 standard is more stringent.

The weight requirement in part 25 originated in the U.S. Civil Air Regulations (CAR) part 4b, which specified climb rates proportional to the square of the stall speed. Climb rates were specified in this manner because it was assumed that the level of safety associated with an emergency landing would depend on the kinetic energy of the airplane, which in turn is proportional to the mass times the velocity squared. For equivalent safety, it was reasoned that excess power, expressed in terms of rate of climb, should be proportional to the stall speed squared. Since the climb requirements of part 25 are now expressed in terms of climb gradient rather than rates of climb, the manner in which the weight for compliance is defined in § 25.161(e)(3) is an historical artifact and out of step with the rest of part 25.

What, if Any, Are the Differences in the Means of Compliance?

Although the explicit standards are different, there are no differences in the means of compliance.

What Is the Proposed Action?

The proposed action would reformat this section into one paragraph with no sub-paragraphs. The wording currently in § 25.161(e)(1) and JAR 25.161(e)(1) would be moved to § 25.161(e) and updated to reflect current industry practice in reference to the en route flight path configurations of § 25.123(a) and JAR 25.123(a). The part 25 wording originated in CAR part 4b when the equivalent requirement to § 25.123(a) for two-engine-inoperative climb performance specified a minimum rate of climb that an airplane must be capable of achieving. In the current part 25 and JAR–25 standards, § 25.123(a) and JAR 25.123(a) require the determination of the en route flight paths, rather than a minimum rate of climb or climb gradient. To be consistent with the current § 25.123(a) and JAR 25.123(a), the proposed § 25.161(e) would refer to en route flight paths rather than either rate of climb (as in current part 25) or gradient of climb (as in current JAR–25).

In addition, the word ''also'' has been added to the lead-in sentence of the proposed standard to clarify that this is an additional requirement for airplanes with four or more engines. The requirements of § 25.161(d) and JAR 25.161(d) remain applicable for these airplanes.

The wording of § 25.161(e)(2) would be incorporated into the proposed § 25.161(e). Section 25.161(e)(3) would be removed. Its removal would result in the proposed § 25.161(e) requirements being applicable at all weights as in the current JAR 25.161(e).

How Does This Proposed Standard Address the Underlying Safety Issue?

This proposed standard would continue to address the underlying safety issue in the same manner. However, it also would expand the conditions under which airplanes with four or more engines must be able to maintain longitudinal, lateral, and directional trim by making the current standard applicable at all relevant gross weight conditions.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety relative to the current part 25. It expands the conditions under which an airplane with four or more engines must be able to maintain longitudinal, lateral, and directional trim.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practice.

Who Would Be Affected by the Proposed Change?

The proposed change would 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?

There is no specific advisory material for either part 25 or JAR–25. The FAA considers developing new advisory material unnecessary.

Change 5: Section 25.175(d), ''Static Longitudinal Stability''

What Is the Underlying Safety Issue Addressed by the Current Standards?

Section 25.175 and JAR 25.175 contain the conditions under which static longitudinal stability must be demonstrated for transport category airplanes. Static longitudinal stability is required by part 25 for the following reasons:

1. To provide additional speed change cues to the pilot through control force changes.
2. To ensure that short periods of unattended operation do not result in any significant changes in attitude, airspeed, or load factor.
3. To provide predictable pitch response.
4. To provide acceptable level of pilot attention (workload) to attain and maintain trim speed and altitude.
5. To provide gust stability.

What Are the Current 14 CFR and JAR Standards?

• The current text of 14 CFR 25.175(d) is:

Section 25.175 Demonstration of Static Longitudinal Stability.

* * * (d) Landing. The stick force curve must have a stable slope, and the stick force may not exceed 80 pounds, at speeds between 1.1 VS0 and 1.8 VS0 with—

(1) Wing flaps in the landing position;
(2) Landing gear extended;
(3) Maximum landing weight;
(4) Power or thrust off on the engines; and
(5) The airplane trimmed at 1.4 V_{S0} with power or thrust off.

• The current text of JAR–25.175(d), Change 14, is:

JAR 25.175 Demonstration of Static Longitudinal stability

* * * (d) Landing. The stick force curve must have a stable slope and the stick force may not exceed 80 pounds at speeds between 1.1 V_{S0} and 1.8 V_{S0} with—

(1) Wing flaps in the landing position;
(2) Landing gear extended;
(3) Maximum landing weight;
(4) The aeroplane trimmed at 1.4 VS0 with
(i) Power or thrust off, and
(ii) Power or thrust for level flight.

What Are the Differences in the Standards and What Do Those Differences Result in?

In addition to the part 25 condition of power—or thrust-off, JAR–25 requires the stick force criteria to be met at the power or thrust for level flight. This additional condition requires additional flight test demonstrations to show compliance, and may influence the design of airplanes for which the application of power has a significant destabilizing effect.

What, If Any, Are the Differences in the Means of Compliance?

Except for the additional power-on condition required by the JAR, there are no differences in the means of compliance for part 25 and JAR–25.

What Is the Proposed Action?

The proposed action would revise part 25 by adopting the more stringent text of JAR 25.175(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the underlying safety issue in the same manner, but would add a requirement to ensure that transport category airplanes have adequate static longitudinal stability in a power-on approach condition.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would increase the level of safety for those transport category airplanes for which the power-on condition is more critical in terms of static longitudinal stability than the power-off condition.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed standard would maintain the current level of safety since industry practice is to comply with both part 25 and the JAR–25.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considers the proposed action to be the most appropriate way to fulfill harmonization goals while maintaining safety and without affecting current industry practices. Using the less stringent part 25 standard was also considered; however, there are normally occurring situations for which level flight in the landing configuration may be relevant. These situations include stepdown fixes on nonprecision approaches and extending the flaps and landing gear to the landing configuration when the glide slope becomes active on a precision approach, but before the glide slope intercept point.

Who Would Be Affected by the Proposed Change?

The proposed change would 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 has not considered another option. The FAA considers that current advisory material is adequate.

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 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.''

Change 1: Section 25.111(c)(4), ''Takeoff Path'':

Current industry practice covering aircraft crew actions concerning the takeoff path already complies with the more stringent JAR requirements. The JAR 25.111(c)(4) requirement allows only certain routine crew actions to be made before the airplane reaches a height 400 feet above the takeoff surface.

This proposal would revise the FAA requirements for propeller feathering before the airplane is at least 400 feet above the takeoff surface by adding the following ''more stringent'' requirements of the JAR standards to include:

Section 25.111 Take-off path.

* * * (c)(4) Except for gear retraction and *automatic* propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

Concerning the impact of complying with the proposed standard, the ARAC working group states there is no additional cost associated with complying with the proposed standard as it represents current practices and policy.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 2: Section 25.147(c)(2), ''Directional and Lateral Control'':

Current industry practice covering pilot techniques concerning controllability in the one-engine inoperative condition already complies with the more stringent JAR requirements. The JAR 25.147(c)(2) standard is more stringent than § 25.147(c)(2) since part 25 does not prescribe any roll rate requirements when one engine is inoperative.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.147(c)(2). The new § 25.147(c)(2) would require roll rate response to be evaluated and found adequate for all speeds likely to be used with one engine inoperative. The word ''peak,'' as used in JAR 25.147(c)(2), would not be included in this proposal in reference to the roll rate since the FAA considers its use too constraining and unclear. The ARAC working group recommends the words ''for climb, cruise, descent and landing approach'' be removed so that this requirement would apply to all flight conditions. The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 3: Section 25.161(c)(2), ''Trim (Longitudinal)'':

Current industry practice covering pilot techniques concerning conditions under which longitudinal trim must be maintained already complies with the more stringent JAR requirements. The JAR 25.161(c)(2) standard is more stringent than § 25.161(c)(2) since part 25 does not require longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.161(c)(2). The new § 25.161(c)(2) would require longitudinal trim to be maintained at speeds and power settings appropriate to an approach on a 3-degree glidepath. In addition, the requirement to demonstrate compliance at ''the most unfavorable center of gravity position approved for landing with the maximum landing weight, and with the most unfavorable center of gravity position approved for landing regardless of weight'' would be simplified to refer to ''the most unfavorable combination of center of gravity position and weight approved for landing.'' The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 4: Section 25.161(e), ''Trim (Four or More Engines)'':

Current industry practice covering pilot techniques concerning conditions under which longitudinal, directional, and lateral trim on airplanes with four or more engines must be maintained is already complying with the more stringent JAR requirements. The § 25.161(c)(2) standard specifies a single weight at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. The JAR 25.161(c)(2) standard, which does not contain this provision, applies at all weights.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.161(e). The new § 25.161(e) would apply to all weights at which a transport category airplane with four or more engines must maintain trim in rectilinear flight. In addition, the ARAC working group states that to be consistent with § 25.123(a) and JAR 25.123(a), the proposed harmonized § 25.161(e)(1) and JAR 25.161(e)(1) should refer to en route flight paths rather that either rate of climb (as in the current part 25) or gradient of climb (as in the current JAR). The ARAC and FAA consider that since the climb requirements of part 25 are now expressed in terms of climb gradient rather that rates of climb, the manner in which the weight for compliance is defined in § 25.161(e)(3) is an historical artifact and out of step with the rest of part 25. Lastly, ARAC finds that the word ''also'' should be added to the lead-in sentence of the proposed standard to clarify that this is an additional requirement for airplanes with four or more engines.

Concerning the impact of complying with the proposed standard, the ARAC working group states the cost of complying with the proposed standard is none as it codifies current practices and policy.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Change 5: Section 25.175(d), ''Static Longitudinal Stability'':

Current industry practice covering pilot techniques concerning conditions under which static longitudinal stability must be demonstrated for transport category airplanes already complies with the more stringent JAR requirements. The JAR 25.175(d) would require the stick force criteria to be met at the power or thrust for level flight in addition to the part 25 condition of power or thrust off.

This proposal would harmonize part 25 to the JAR by adding an additional requirement to § 25.175(d). The new § 25.175(d) would add a requirement to ensure that transport category airplanes have adequate static longitudinal stability in a power-on approach condition. The ARAC working group states the proposed change will have no increase to manufacturing costs to applicants already conducting JAA certifications. The ARAC has informed the FAA that for future certifications, part 25 manufacturers intend to conform to JAA standards. Therefore, the FAA considers that for current and future part 25 aircraft certifications all manufacturers will meet JAA certification and this rule would result in no additional costs to manufacturers.

Manufacturers are expected to receive certification cost-savings with a single FAA/JAA certification requirement for new aircraft. The FAA, however, has not attempted to quantify the cost savings for 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 the benefits of harmonization exceed the cost, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

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 has 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.

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 § 25.111 by revising paragraph (c)(4) to read as follows:

§ 25.111 Takeoff path.

* * * * *

(c) * * *

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

* * * * *

3. Amend § 25.147 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding new paragraph (d) to read as follows:

§ 25.147 Directional and lateral control.

* * * * *

(d) *Lateral control; roll capability.* With the critical engine inoperative, roll response must allow normal maneuvers. Lateral control must be sufficient, at the speeds likely to be used with one engine inoperative, to provide a roll rate necessary for safety without excessive control forces or travel.

* * * * *

4. Amend § 25.161 by revising paragraph (c)(2), and by revising paragraph (e) as follows:

§ 25.161 Trim.

* * * * *

(c) * * *

(2) Either a glide with power off at a speed not more than 1.4VS1, or an approach within the normal range of approach speeds appropriate to the weight and configuration with power settings corresponding to a 3 degree glidepath, whichever is the most severe, with the landing gear extended, the wing flaps retracted and extended, and with the most unfavorable combination of center of gravity position and weight approved for landing; and

* * * * *

(e) *Airplanes with four or more engines.* Each airplane with four or more engines must also maintain trim in rectilinear flight with the most unfavorable center of gravity and at the climb speed, configuration, and power required by § 25.123(a) for the purpose of establishing the en route flight paths with two engines inoperative.

5. Amend § 25.175 by revising the text of paragraph (d)(4) to read as follows:

§ 25.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(4) The airplane trimmed at $1.4V_{SO}$ with—

(i) Power or thrust off, and

(ii) Power or thrust for level flight.

* * * * *

Issued in Renton, Washington, on December 18, 2001.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification.

[FR Doc. 02–655 Filed 1–11–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Monday,
January 14, 2002

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 19 and 52

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999; Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2001–01; FAR Case 2000–302; Correction]

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correcting amendments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing amendments to FAC 2001–01, FAR Case 2000–302, Veterans Entrepreneurship and Small Business Development Act of 1999 published in the **Federal Register** at 66 FR 53492, October 22, 2001, to correct the language concerning the separate goal for service-disabled veteran-owned small business concerns. Language was added in FAC 97–20 that service-disabled veteran-owned small business concerns were to be included in the goal for veteran-owned small businesses. This was based on a statutory change. A further statutory change established a goal for service-disabled veteran-owned small business concerns that is separate from the goal for veteran-owned small business concerns. This statute was implemented in FAC 2001–01 but, inadvertently, some of the FAC 97–20 language intended for deletion did not appear in the published case.

EFFECTIVE DATE: January 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff at (202) 501–0044 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2001–01, FAR case 2000–302, Correction.

Dated: January 10, 2002.

Gloria M. Sochon,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c) as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

2. Amend section 19.704 in paragraph (a)(1) by removing the period after the first sentence and adding a semicolon in its place; and by removing the last two sentences. The revised paragraph reads as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors;

* * * * *

3. Amend section 19.705–4 in paragraph (d)(6) by removing the last sentence. The revised paragraph reads as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.219–9 by revising the date of the clause to read ''(JAN 2002)''; and in paragraph (d)(1) of the clause by removing the second and third sentences. The revised paragraph reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Jan 2002)

* * * * *

(d) * * *

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

* * * * *

[FR Doc. 02–937 Filed 1–10–02; 3:07 pm]

BILLING CODE 6820–EP–P

Federal Register

Monday,
January 14, 2002

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 19 and 52

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999; Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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* * * * *

[FR Doc. 02–937 Filed 1–10–02; 3:07 pm]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2506/P.L. 107–115

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Jan. 10, 2002; 115 Stat. 2118)

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H.R. 3338/P.L. 107–117

Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Jan. 10, 2002; 115 Stat. 2230)

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400–429	(869–042–00163–0)	55.00	Oct. 1, 2000
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
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1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
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200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..