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Rules and Regulations

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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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–063–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties in Texas to the list of regulated areas. The interim rule, which followed the detection of bunted kernels in samples taken from bins of wheat grain stored in Baylor County and harvested in Archer and Baylor Counties, was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States.

EFFECTIVE DATE: This interim rule became effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Director for Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1231; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 13, 2001, and published in the **Federal Register** on July 19, 2001 (66 FR 37575–37576, Docket No. 01–063–1), we amended the Karnal bunt regulations in 7 CFR 301.89–3 by adding Archer and Baylor Counties, in their entirety, to the list of regulated areas in Texas. This action was necessary due to the detection of bunted wheat kernels in samples taken from bins of wheat grain stored in Baylor County. The wheat grain was harvested in Archer and Baylor Counties.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties, TX, to the list of regulated areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. The entities most likely to have been affected by the interim rule are wheat producers. The size of these entities is unknown. It is reasonable to assume, however, that most have gross annual receipts of less than $750,000 and are, therefore, small in size according to the U.S. Small Business Administration's criteria. This assumption is based on composite data from the 1997 Census of Agriculture, which reports that wheat was harvested for grain from 50,167 acres on 159 farms in Archer County in 1997; that grain had a market value of $4.161 million. In Baylor County, wheat was harvested for grain from 84,368 acres on 166 farms in 1997; that grain had a market value of $6.686 million.

Producers in regulated areas may grow Karnal bunt host crops, but the wheat, durum wheat, or triticale must be tested for Karnal bunt before the harvested crop is moved from the field in which it was grown. This required testing is provided to producers free of charge. Negative-testing grain may be moved out of the regulated area without restriction. Grain found to contain bunted kernels may be moved outside a regulated area only under a limited permit and only to a specified destination for specified handling, utilization, or processing that will mitigate the Karnal bunt risk associated with the grain.

Compensation has been made available to producers in regulated areas to address the loss in value of positive-testing grain. As the 2000–2001 crop season was the first regulated crop season for Archer and Baylor Counties, producers there were eligible for compensation payments of up to $1.80 per bushel. Those payments have, in many cases, already been made to producers affected by the detection of Karnal bunt in Archer and Baylor Counties, thus limiting the negative effects of Karnal bunt infection and the subsequent regulatory restrictions intended to prevent the further spread of the disease.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 66 FR 37575–37576 on July 19, 2001.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC. this 16th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1748 Filed 1–23–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No.01–019F]

RIN 0583–AC89

Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2002

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These increases in fees reflect the national and locality pay raise for Federal employees (the increase of 3.6 percent anticipated at the time of the proposal to be effective January 2002) and inflation. At this time, FSIS is not changing the fee for the Accredited Laboratory Program. To raise the fees for voluntary egg products inspection (base time) and overtime and holiday voluntary inspection activities, done on other than a continuous resident basis, the Agency is adding Part 592 to the CFR. At this time, FSIS is only including the voluntary egg products inspection fees in this new part. The Agency is also amending the heading of Subchapter I of Chapter III of the CFR by deleting the word ''Act'' so the heading reads ''Egg Products Inspection'' because voluntary inspection of egg products is performed under the Agricultural Marketing Act (AMA).

DATES: The final rule is effective January 27, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations and Directive Development Staff, Office of Policy, Program Development and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

For information concerning fees, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Drop 5262 Beltsville, MD 20705, (301) 504–5885.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments, meat and poultry processed at official establishments and egg products processed at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*)(AMA), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for October 1, 2001 to September 30, 2002, the Agency has identified increases in the costs of these inspection services due specifically to the national and locality pay raise for Federal employees (the increase of 3.6 percent anticipated at the time of the proposal to be effective January 2002) and inflation.

FSIS calculated the new fees by adding the projected increase in salaries and inflation for FY 2001 and FY 2002 to the actual cost of the services in FY 2000. The Agency calculated inflation to be 2.0% for FY 2001 and 2.0% for FY 2002. The Agency considered the costs that it will incur because of the pay raise in January 2002 and averaged its pay costs out over the entire FY 2002.

FSIS did not use the fees currently charged as a base for calculating the new fees for FY 2002 because the current fees are based on estimates of costs to the Agency for FY 2001 and FY 2002. The Agency now knows the actual cost of inspection services for FY 2000 and used the actual costs in calculating the new fees.

The current and new fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND NEW FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

[Except for voluntary inspection of egg products]

Service	Current rate	New rate
Base time	$38.44	$42.64
Overtime & holiday	41.00	44.40
Laboratory	60.44	68.32

The differing new fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors, including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES IN TABLE 1

Base Time:	
Actual FY 2000 cost	$39.67
Inflation and salary increases	2.95
Adjustment for divisibility by quarter hours	.02
Total	$42.64
Overtime and Holiday Inspection Services:	
Actual FY 2000 cost	$41.32
Inflation and salary increases	3.07
Adjustment for divisibility by quarter hours	.01
Total	$44.40
Laboratory Services:	
Actual FY 2000 cost	$63.59
Inflation and salary increases	4.73
Total	$68.32

FSIS is also raising the fees for its voluntary inspection of egg products for base time, which are currently set forth in § 55.510 (b) of Title 7 of the Code of Federal Regulations (CFR), from $33.64

to $42.64 per hour per program employee and for overtime and holiday inspection which is currently set forth in § 55.510 (c) of Title 7 of the CFR from $35.52 to $44.40 per hour per program employee. The differing proposed fees for basetime services and for holiday and overtime services is due to the different amount that it costs FSIS to provide those services. These differences in cost stem from various factors, which include the differing salary levels of the program employees who perform the services. These fees have not been changed in six years. Additionally, in conjunction with the new fee increase for the voluntary inspection of egg products, FSIS is adding provisions that delineate the types of services that would be considered to be overtime or holiday work.

When the regulations governing the mandatory inspection of egg products were transferred to Title 9 of the Code of Federal Regulations (CFR) on December 31, 1998 (63 FR 72352), the regulations governing the voluntary inspection of egg products were not also transferred. FSIS, however, does perform voluntary inspection of egg products, and certain other products, under the AMA. The Agency is now adding part 592 to Title 9 of the CFR which contains the fees for basetime and overtime and holiday voluntary inspection of egg products, as well as an explanation of what services are considered to be overtime and holiday work. Further, the Agency is amending the heading of Subchapter I of Chapter III of the CFR by deleting the word ''Act'' so the heading will be ''Egg Products Inspection.''

At this time, FSIS is only including in part 592 of Title 9 of the CFR the base time fee scheme and the overtime and holiday fee scheme for the voluntary inspection of egg products that is done on other than a continuous resident basis. In a separate rulemaking, the Agency will propose to include in Title 9 of the CFR other provisions of the voluntary inspection of egg products regulations. FSIS will coordinate this effort with AMS.

The Agency must recover the actual cost of voluntary inspection services covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's costs.

Proposed Rule and Comments

On October 16, 2001, FSIS published a proposed rule (66 FR 52548) to increase the fees it charges for meat, poultry, and egg products voluntary, overtime, and holiday inspection services. The Agency provided 30 days for public comment, ending on November 11, 2001. FSIS received no comments on the proposed rule. The Agency believes that adequate notice has been given to affected parties. The Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register** in order for FSIS to recover the costs of the services provided and reduce the possibility of monetary losses for the Agency. Therefore, the increases in fees will be effective January 27, 2002.

Summary of the Final Rule

FSIS is amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $38.44 to $42.64 per hour per program employee. The Agency is also amending §§ 391.3, 590.126, and 590.128(a) to increase the rate for providing meat, poultry, and egg products overtime and holiday inspection services from $41.00 per hour per employee to $44.40 per hour per employee. Additionally, FSIS is amending § 391.4 to increase the rate for laboratory services from $60.44 per hour per employee to $68.32 per hour per employee. Further, the Agency is adding part 592 to the CFR to increase the rate for the voluntary inspection of egg products for base time from $33.64 to $42.64 per hour per employee and for overtime and holiday inspection from $35.52 to $44.40 per hour per program employee. FSIS is also amending the heading of Subchapter I of Chapter III of the CFR by deleting the word ''Act'' so the heading reads ''Egg Products Inspection'' because voluntary inspection of egg products is performed under the AMA.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments and plants should not be affected adversely by the increases in fees because the new fee increases provided for, in general, reflect only a small increase in the costs currently borne by those entities that choose to use the inspection services for which fees are being raised. Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. The inspection services that the fee increases effect are generally used by larger establishments and plants because of their larger production volume, the greater complexity and diversity of the products that they produce, and the need of their clients (large commercial or institutional establishments) for on-time delivery of large volumes of product.

Establishments and plants that seek the Agency's services are likely to have calculated that the incremental costs of overtime and holiday inspection services will be less than the incremental expected benefits of additional revenues that they would realize from additional production.

Economic Effects

As a result of the new fees, the Agency expects to collect an estimated $101 million in revenues for FY 2002, compared to $94 million under the current fee structure. The costs that industry will experience by the raise in fees are similar to other increases that the industry faces because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2000 was about 82 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, March 28, 2001). The total volume of U.S. egg product production in 2000 was about 2.3 billion pounds (2001 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the proposed fees increases is, in general, $.00008. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the proposed fee increases to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System of U.S. Demand for Food. USDA/ERS Technical Bulletin No 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update.* FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information, or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.;* 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $42.64 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $44.40 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $68.32 per hour per program employee.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

3. The authority citation for Part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

4. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $44.40.

5. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $44.40.

* * * * *

6. Revise the heading of Subchapter I to read as follows:

SUBCHAPTER I—EGG PRODUCTS INSPECTION

7. Add part 592 to Subchapter I to read as follows:

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

Sec.

592.1 Scope and purpose.
592.2 Base time rate.
593.3 Overtime rate.
593.4 Holiday rate.

Authority: 7 U.S.C. 1621–1627.

§ 592.1 Scope and purpose.

The fees that shall be charged for, and collected by the Food Safety and Inspection Service for the voluntary base time, overtime, and holiday time inspection services of egg products as provided by FSIS on other than a continuous resident basis shall be at the applicable rates, and on the basis set forth in §§ 592.2 through 592.4 below, in lieu of that for such services set forth in 7 CFR part 55. The fees and charges for such services shall be paid by check, draft, or money order to the Food Safety and Inspection Service.

§ 592.2 Base time rate.

The base time rate for voluntary inspection services of egg products is $42.64 per hour per program employee.

§ 592.3 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $44.40.

§ 592.4 Holiday rate.

When an official plant requires voluntary inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period

and must pay the Agency for such holiday work at an hourly rate of $44.40.

Done at Washington, DC, on January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–1751 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG87

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 28, 2002, for the direct final rule that appeared in the **Federal Register** of November 14, 2001 (66 FR 56982). This direct final rule amended the NRC's regulations by revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS was also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. This document confirms the effective date.

DATES: The effective date of January 28, 2002, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (http://ruleforum.llnl.gov). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–8126 (e-mail: *mlh1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On November 14, 2001 (66 FR 56982), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 to revise the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS were also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 17th day of January, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–1719 Filed 1–23–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 01P–0304]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Ingestible Telemetric Gastrointestinal Capsule Imaging System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the ingestible telemetric gastrointestinal capsule imaging system device into class II (special controls). The special controls that will apply to this device are set forth below. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carolyn Neuland, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

On June 11, 2001, FDA received a petition submitted under section 513(f)(2) of the act by Given Imaging, Ltd., through Hogan & Hartson, L.L.P., seeking an evaluation of the automatic class III designation of its GIVEN Diagnostic Imaging System (GIVEN System). In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the GIVEN System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the GIVEN System can be classified in class II with the establishment of special controls. This device is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Biocompatibility; (2) electrical and mechanical safety; (3) radio-frequency radiated power and electromagnetic compatibility, including interference with other medical devices and with this device (e.g., interference with image acquisition); (4) functional reliability, including structural integrity and image acquisition; (5) intestinal obstruction or injury; and (6) misinterpretation of the captured images. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA.''

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including testing standards for biocompatibility, and electrical and mechanical performance. The class II special controls guidance also includes appropriate prescription and patient labeling. FDA believes that adherence to the class II special controls addresses the risks to health identified above and provides a reasonable assurance of the safety and effectiveness of the device.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA review of key design features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the ingestible telemetric gastrointestinal capsule imaging system before marketing the device.

On August 1, 2001, FDA issued an order classifying the GIVEN System and substantially equivalent devices of this generic type into class II under the generic name, ingestible telemetric gastrointestinal capsule imaging system. FDA identifies this generic type of device as an ingestible telemetric gastrointestinal capsule imaging system, which is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities in the small bowel.

FDA is codifying this device by adding § 876.1300. The order also identifies a special control applicable to this device a guidance document entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA.''

II. Electronic Access

In order to receive the guidance entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA'' via your fax machine, call the 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 enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1385) followed by the pound sign (#). 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 an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, 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 device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA'' is available on the Internet at http://www.fda.gov/cdrh/ode/guidance/1385.pdf.

III. 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.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory 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 it 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. FDA knows of only one manufacturer of this type of device.

Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant 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 is not required.

V. 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 order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

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

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

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

2. Section 876.1300 is added to subpart B to read as follows:

§ 876.1300 Ingestible telemetric gastrointestinal capsule imaging system.

(a) *Identification.* An ingestible telemetric gastrointestinal capsule imaging system is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. The device captures images of the small bowel with a wireless camera contained in a capsule. This device includes an ingestible capsule (containing a light source, camera, transmitter, and battery), an antenna array, a receiving/recording unit, a data storage device, computer software to process the images, and accessories.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance, ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging Systems; Final Guidance for Industry and FDA.''

Dated: January 14, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–1722 Filed 1–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 15

RIN 2900–AJ63

Delegations of Authority—Equal Employment Opportunity (EEO) Responsibilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document delegates to certain Department of Veterans Affairs (VA) officials authority to supervise and control the operation of the administrative Equal Employment Opportunity (EEO) Discrimination Complaint Processing System; to make procedural decisions to accept or dismiss discrimination complaints; to decide breach of settlement agreement claims; to resolve claims of dissatisfaction with the processing of previously filed discrimination complaints; to make under limited circumstances substantive final agency decisions; and take final agency action following an Equal Employment Opportunity Commission (EEOC) Administrative Judge's decision; and to monitor agency compliance with orders and decisions of the Office of Employment Discrimination Complaint Adjudication (OEDCA) and EEOC. The document also requires that any complaint filed against the Secretary or Deputy Secretary based upon personal actions or decisions by these officials as opposed to ministerial actions will be transferred to another Federal agency for processing and adjudication on a cost reimbursable basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Management is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

DATES: *Effective Date:* January 24, 2002.

FOR FURTHER INFORMATION CONTACT: James S. Jones, Deputy Assistant Secretary for Resolution Management, 202–501–2800.

SUPPLEMENTARY INFORMATION: When the Department's EEO complaint resolution process was reorganized several years ago, a cumbersome regulation was promulgated which outlined a transitional process for the transfer of procedural decision making authority from the Office of General Counsel to the Office of Resolution Management (ORM). Since that time, the authority transfer has been completed, and there is no further need for the bifurcated authority in the regulation. It is rescinded by this document, and in its place new regulations delegate a series of authorities to manage the employment discrimination complaint resolution process; to make procedural decisions to accept or dismiss complaints; to decide claims of breach of settlement agreement; to resolve claims of dissatisfaction related to the processing of a previously filed employment discrimination complaint; to make limited substantive final agency decisions and to take final agency action following an EEOC Administrative Judge's decision; to monitor agency compliance with the orders and decisions of OEDCA and EEOC; and to transfer to another federal agency for processing and adjudication any complaints filed against the Secretary or Deputy Secretary based upon their personal actions or decisions rather than ministerial actions.

The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO discrimination complaint processing within the Department. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and Regional EEO Officers/Field Managers are delegated authority to accept or dismiss discrimination complaints filed by employees, former employees, and applicants for employment. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are also

delegated authority to decide breach of settlement agreement claims, resolve claims which express dissatisfaction with the processing of a previously filed employment discrimination complaint, and to monitor agency compliance with the orders and decisions of OEDCA and EEOC.

The Director and Associate Director of OEDCA are delegated authority to make procedural decisions to accept or dismiss employment discrimination complaints filed by employees, former employees and applicants for employment that may be pending before OEDCA, where the interests of administrative complaint processing efficiency may be best served by OEDCA making such decisions. The Director and Associate Director are also delegated authority to dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment against ORM; to decide all breach of settlement claims raised by ORM employees, former employees, or applicants for employment; to consider and resolve claims by ORM employees, former employees, and applicants for employment that express dissatisfaction with the processing of previously filed complaints; and to make procedural decisions to accept or dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment, where ORM must recuse itself because of an actual, apparent, or potential conflict of interest.

The Chairman, Board of Contract Appeals, is delegated authority to make procedural decisions to accept or dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment and to make substantive decisions and take final agency actions following a decision by an EEOC Administrative Judge in cases where OEDCA has recused itself due to an actual, apparent, or potential conflict of interest.

Where an EEO complaint is based upon the personal actions or decisions of the Secretary or Deputy Secretary rather than ministerial acts, the complaint will be transferred to another Federal agency for processing and adjudication on a cost reimbursement basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Mangement is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

This document is published without regard to the notice and comment and effective date provisions of 5 U.S.C. 553 since it relates to agency management and personnel.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 15

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Approved: January 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 2 and 15 are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

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

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729; 44 U.S.C. 3702, unless otherwise noted.

2. Section 2.6 is amended by:

A. Removing paragraph (e)(6);

B. Redesignating paragraphs (e)(7) through (e)(12) as paragraphs (e)(6) through (e)(11), respectively;

C. Adding paragraphs (h), (i), (j), and (k) immediately following the authority citation for paragraph (g).

The additions and revisions read as follows:

§ 2.6 Secretary's Delegations of Authority to Certain Officials (38 U.S.C. 512).

* * * * *

(h) *Delegations to Office Resolution Management Officials (ORM).* (1) The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO Discrimination Complaint Processing System within the Department.

(2) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and all Regional EEO Officers/Field Managers are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints based upon race, color, national origin, sex, religion, age, disability, or reprisal filed by employees, former employees, or applicants for employment.

(3) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to make agency decisions on all breach of settlement claims raised by employees, former employees, and applicants for employment.

(4) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to consider and resolve all claims raised by employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to monitor compliance by Department organizational components with orders and decisions of the OEDCA and the EEOC.

(i) *Delegations to officials of the Office of Employment Discrimination Complaint Adjudication (OEDCA).* (1) The Director and Associate Director, OEDCA, are delegated authority to make procedural decisions to dismiss, in whole or in part, any EEO discrimination complaint filed by any employee, former employee, or applicant for employment that may be pending before OEDCA, where administrative complaint processing efficiency may be best served by doing so.

(2) The Director and Associate Director, OEDCA, are delegated authority to dismiss, in whole or in part any EEO discrimination complaint based upon race, color, religion, sex, national origin, age, disability, or reprisal filed by any ORM employee, former employee, or applicant for employment.

(3) The Director and Associate Director, OEDCA, are delegated authority to make the agency decision on all breach of settlement claims raised by ORM employees, former employees, and applicants for employment.

(4) The Director and Associate Director, OEDCA, are delegated authority to consider and resolve all claims raised by ORM employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Director and Associate Director, OEDCA, are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints filed by employees, former employees, or applicants for employment where the ORM must recuse itself from a case due to an actual, apparent, or potential conflict of interest.

(j) *Delegation to the Chairman, Board of Contract Appeals.* In cases where OEDCA has recused itself from a case due to an actual, apparent, or potential conflict of interest, the Chairman, Board of Contract Appeals, is delegated authority to make procedural agency decisions to dismiss, in whole or in part, EEO discrimination complaints filed by agency employees, former employees, and applicants for employment; to make substantive final agency decisions where complainants do not request an EEOC hearing; and to take agency action following a decision by an EEOC Administrative Judge.

(k) *Processing complaints involving certain officials.* A complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural acceptability review, investigation, and substantive decisionmaking to another Federal agency (e.g., The Department of Justice) pursuant to a cost reimbursement agreement. Referral will not be made when the action complained of relates merely to ministerial involvement in such matters (e.g., ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, assistant secretaries, or staff office heads).

PART 15—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERANS AFFAIRS

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

Authority: 29 U.S.C. 794, unless otherwise noted.

§ 15.170 [Amended]

4. In § 15.170, paragraph (c) is amended by removing ''Equal Employment Opportunity'' each time it appears, and adding, in its place, ''Resolution Management''.

[FR Doc. 02–1735 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7130–9]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this direct final action, EPA is approving the State of Colorado's request to relax the federal Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline supplied to the Denver/Boulder area (hereafter ''Denver area'') from June 1st to September 15th (the ozone control season) of each year. This action amends our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch (''psi'') to 9.0 psi. EPA has determined that this change to our federal RVP regulations is consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

DATES: This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives substantive adverse comments by February 25, 2002. If substantive adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov

SUPPLEMENTARY INFORMATION:

Plain language: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean the Environmental Protection Agency.

Regulated Entities: Entities potentially affected by this rule are fuel producers and distributors. Regulated categories include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, gasoline retailers and wholesale purchaser-consumers.

To determine whether you are affected by this rule, you should carefully examine the requirements in section 80.27(a)(2) of title 40 of the Code of Federal Regulations (''CFR''). If you have any questions regarding the applicability of this action to a particular entity, you should consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking: A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area.*

I. Background

A. History of Gasoline Volatility Regulation

In 1987, we determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline,

referred to as volatile organic compounds (''VOCs''), are precursors for the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lung sensitization to other pollutants.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is the Reid Vapor Pressure (''RVP''). Under authority in section 211(c) of the Clean Air Act (CAA), we promulgated regulations on March 22, 1989, that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1 to September 15. These regulations were referred to as Phase I of a two-phase nationwide [1] program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season.[2] On June 11, 1990, we promulgated more stringent volatility controls for Phase II.[3] These requirements established volatility standards of 9.0 psi and 7.8 psi maximum RVP (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone National Ambient Air Quality Standard or ''NAAQS'') during the ozone control season.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires us to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. It further requires us to establish more stringent RVP standards in non-attainment areas if we find such standards ''necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.'' Section 211(h) prohibits us from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone non-attainment area redesignated to attainment.

On December 12, 1991, we modified our Phase II volatility regulations to be consistent with section 211(h) of the CAA.[4] The modified regulations prohibit the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as non-attainment, the regulations retained the original Phase II standards published in 1990.[5]

As stated in the preamble for the Phase II volatility controls,[6] and reiterated in the proposed change to the volatility standards published in 1991,[7] we will rely on States to initiate changes to our volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.[8] In those rulemakings, we explained that the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi for some month or months in a non-attainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. We have approved such petitions to amend the federal RVP regulations for South Carolina [9] and Tennessee.[10]

B. History of Federal RVP Requirements for the Denver Area

On November 6, 1991, we issued ozone nonattainment designations for the 1-hour ozone NAAQS (hereafter ''ozone NAAQS'' or ''ozone standard'') pursuant to section 107(d)(4)(A) of the CAA (56 FR 56694). In that action, we designated the Denver area as a nonattainment area [11] and classified it as a ''transitional area'' as determined under section 185A of the CAA.[12]

Because we designated the Denver area as a transitional ozone nonattainment area, the applicable volatility standard for the Denver area, under the Federal RVP rule promulgated on December 12, 1991, was 9.0 psi RVP in May and 7.8 psi from June 1 to September 15, beginning in 1992.[13] Since 1992, and in response to waiver petitions from the Governor of Colorado, we have waived the 7.8 psi RVP requirement for the Denver area and have required the less stringent 9.0 psi RVP. In-depth discussions of these past actions can be found in the applicable **Federal Register** notices.[14] Our decisions to grant these petitions were based on evidence that demonstrated the 7.8 psi standard was not necessary given the area's record of continued attainment of the 1-hour ozone standard using 9.0 psi RVP gasoline and evidence presented by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained.

On August 8, 1996, the Governor of Colorado submitted a maintenance plan and requested that we redesignate the Denver area to attainment for the ozone NAAQS.[15] We did not act on the Governor's request as the maintenance plan had both legal and technical problems that precluded our full approval.

In July, 1997, we established a new 8-hour ozone NAAQS of 0.08 parts per million (ppm).[16] At that time, we also promulgated regulations governing when the 1-hour ozone standard would no longer apply to areas. On June 5, 1998, we published a final rule (*see* 63 FR 31014) that revoked the 1-hour ozone standard for areas that were attaining the 1-hour standard; this

[1] Hawaii, Alaska and U.S. territories were excepted.

[2] 54 FR 11868 (Mar. 22, 1989).

[3] 55 FR 23658 (June 11, 1990).

[4] 56 FR 64704 (Dec. 12, 1991).

[5] See 55 FR 23658 (June 11, 1990).

[6] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[7] See 56 FR 24242 (May 29, 1991).

[8] See CAA section 211(h)(1) (allowing EPA to set a standard more stringent than 9.0 psi as necessary to achieve comparative emissions in nonattainment areas considering enforceability, the need of an area for emissions control and economic factors).

[9] 58 FR 46508 (Sept. 1, 1993).

[10] 59 FR 15625 (Apr. 4, 1994).

[11] The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

[12] Section 185A defines a transitional area as ''an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 [that] has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989.'' In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

[13] The standard applicable in other areas of Colorado is 9.0 psi from May 1 to September 15.

[14] See 53 FR 26067 (Apr. 30, 1993); 59 FR 15629 (Apr. 4, 1994); 61 FR 16391 (Apr. 15, 1996); 63 FR 31627 (June 10, 1998); and 66 FR 28808 (May 24, 2001).

[15] In order for EPA to redesignate an area to attainment under section 107(d)(3)(D) of the CAA, the Governor must submit a redesignation request and a maintenance plan that meets the requirements of section 107(d)(3)(E) and section 175A of the CAA, the redesignation requirement of the General Preamble for the Implementation of Title I of CAA Amendments of 1990 (57 FR 13498 (Apr. 16, 1991), and 57 FR 18070 (April 28, 1992)), and addresses the provisions of EPA redesignation policies and guidance documents. In general, the ozone maintenance plan must demonstrate long-term (i.e., 10 years) maintenance of the ozone NAAQS.

[16] 62 FR 38856 (July 18, 1997).

included the Denver area.[17] As a result of our finding that the 1-hour ozone standard was revoked and no longer applied to the Denver area, the State's August 8, 1996, 1-hour ozone redesignation request and maintenance plan became moot and neither the State nor EPA contemplated further action.

In 1998, the Governor of Colorado again requested that we waive the federal 7.8 psi RVP requirement for the Denver area. We found that while a 9.0 psi RVP standard was in place, the Denver area had shown continuous attainment of the 1-hour ozone standard since 1987 and had monitored attainment of the 8-hour standard since 1994. We concluded that retaining the 9.0 psi RVP standard would not cause the area's air quality to significantly deteriorate. *See* 63 FR 31627, (June 10, 1998). Moreover, we concluded that imposing a 7.8 psi standard would result in significant costs for consumers and refiners. We therefore extended the waiver relaxing the federal RVP standard for the area to 9.0 psi for the ozone control seasons of 1998 through 2000. We explained that designations under the new 8-hour ozone standard would be made by July 2000, and that our consideration of a permanent revision to the federal RVP standard for the area would be appropriate at that time.

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded, but did not vacate, the revised 8-hour ozone standard.[18] On February 27, 2001, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and remanded the decision to the Court of Appeals for further proceedings.[19] In the interim period, while the Supreme Court was considering the case, we reinstated the l-hour ozone standard in all areas of the nation to ensure the availability of a fully enforceable Federal ozone standard to protect public health.[20] With the reinstatement of the 1-hour ozone standard, the 1-hour standard designations and classifications that applied at the time the standard was revoked were also reinstated. We reinstated the 1-hour standard for the Denver area effective January 16, 2001, and returned the area to nonattainment for the 1-hour ozone standard with its prior ''transitional'' classification.

As a result of the reinstatement of the nonattainment designation, the Denver Regional Air Quality Council (RAQC) and the State developed a revised maintenance plan that updated the August 8, 1996, Governor's submittal and addressed our technical and legal concerns with the 1996 submittal. The Governor submitted a redesignation request and a proposed revised maintenance plan on November 30, 2000, in conjunction with a request for parallel processing. The Governor subsequently submitted the final redesignation request and maintenance plan on May 7, 2001.

The Governor's final submittal of the revised maintenance plan incorporated a gasoline RVP limit of 9.0 psi. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance plan's time period of 1993 through 2013 with the 9.0 psi limit, Colorado requested that the 9.0 psi summertime RVP standard (10.0 psi for ethanol blends) be made permanent for the Denver area upon our approval of the redesignation request and maintenance plan.

EPA's Region VIII approved the State's redesignation request and maintenance plan on September 11, 2001 (66 FR 47086) and it became effective October 11, 2001.[21] In that decision, Region VIII indicated that the change to assign a permanent RVP standard of 9.0 psi for the Denver area would be appropriate, but a separate rulemaking would be necessary to revise the federal RVP requirements for Colorado as specified in 40 CFR § 80.27(a)(2). That is the purpose of this direct final rule.

II. Justification for Granting Colorado's Request To Permanently Change the RVP Standard for the Denver Area

As previously mentioned, according to the preamble for the Phase II volatility controls,[22] the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. The June 23, 2000, petition by the Governor of Colorado to extend the temporary exemption from the 7.8 psi RVP standard for the Denver area to the 2001 ozone control season (see 66 FR 28808, May 24, 2001) and available evidence indicate that imposing the 7.8 psi standard would result in costs to consumers and industry, and that these costs are not reasonable given that the 7.8 psi RVP standard is not necessary to ensure continued attainment of the 1-hour ozone standard.

Six refiners supply the Denver market and these refiners vary in size, refining capacity and complexity. The Colorado Petroleum Association (CPA) estimated that all of the refiners would have to spend capital dollars to upgrade and reconfigure their facilities to provide gasoline blended at the 7.8 psi RVP level for the Denver market. The CPA[23] estimated that upgrading equipment and reconfiguring facilities to provide 7.8 psi RVP gasoline to the Denver market would cost refiners approximately $15–25 million. Documentation submitted in support of Colorado's petition for relaxation of the 7.8 psi RVP standard for the 2001 ozone control season indicate that implementation of that standard would cost the consumer about 1.5 cents more per gallon of gasoline with an overall seasonal cost of $4,500,000.[24]

The record also supports the conclusion that retention of the 9.0 psi standard will not cause deterioration of air quality in the Denver area. As stated above, the area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. Further, the State has demonstrated that it has sufficient additional contingency measures, including a control on gasoline RVP, that can be implemented to bring the area back into attainment should the area exceed the 1-hour ozone NAAQS in the future. These State contingency measures are identified in Chapter 3, section F of the revised maintenance plan.

[17] Similar rulemakings for other areas were promulgated on July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911).

[18] *American Trucking Ass'n* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999).

[19] *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001).

[20] 65 FR 45182 (July 20, 2000).

[21] Documents related to EPA's approval of the Colorado redesignation request and maintenance plan are available for public inspection during normal business hours at: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the State documents relevant to that action are available for public inspection at: Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

[22] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[23] Memorandum from Stan Dempsey, Colorado Petroleum Association, Denver, CO, to Kerri Fiedler, EPA Region VIII, dated 2/07/2001.

[24] Memorandum from K.B. Livo, Colorado Department of Public Health and Environment, to Kerri Fiedler, Region VIII, dated 12/07/2000.

Based on the foregoing, we have decided to grant Colorado's's request to permanently change the federal volatility standard from 7.8 psi to 9.0 psi RVP for gasoline in the Denver/Boulder area during the ozone control season. The State has met the criteria outlined in our December 12, 1991 RVP rulemaking for relaxing the federal RVP regulations. The State has demonstrated that it has sufficient alternative programs to achieve attainment and maintenance of the ozone NAAQS and that the less stringent federal RVP standard is appropriate given the local economic impact that the more stringent 7.8 psi RVP requirement would cause.

III. Final Action

We are taking direct final action to approve Colorado's request to permanently relax the federal RVP standard applicable to summertime gasoline supplied to the Denver area. This action will change the applicable standard from 7.8 psi to 9.0 psi in 40 CFR 80.27(a)(2).[25] We view this as a noncontroversial action. Our final rule of September 11, 2001, fully approved the maintenance plan for the Denver area. It shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. This maintenance plan went through public notice and comment during the approval process (see 66 FR 24075, May 11, 2001), and no adverse comments were received. Further, EPA has granted Colorado exemptions allowing the Denver area to receive gasoline containing up to 9.0 psi RVP since 1992, and this rule merely makes this currently applicable RVP limit permanent.

Because we view this as a noncontroversial amendment and anticipate no adverse comment, we are publishing this action without prior proposal. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the rule amendment should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 25, 2002.

If EPA receives such comments, we will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 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, 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 entitlement, 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any 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 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. Today's rule merely permanently continues the current temporary relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's rule, therefore, 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. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

D. 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, Apr. 23, 1997) applies to any rule that:

[25] Consistent with Colorado's request, this direct final action also automatically changes the effective federal RVP standard for summertime ethanol blends of gasoline supplied to the Denver area. Under 40 CFR 80.27(d), gasoline having a denatured anhydrous ethanol concentration of at least 9.0 percent but no more than 10.0 percent (by volume) is allowed to have an RVP that exceeds the applicable standard in 40 CFR 80.27(a) by one psi. Since this direct final action relaxes the RVP standard in 40 CFR 80.27(a) for Denver's summertime gasoline from 7.8 to 9.0 psi, the effective RVP standard for Denver's ethnol blends of summertime gasoline is relaxed from 8.8 to 10.0 psi.

(1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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 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 rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

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 OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

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(a).

H. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver area must comply. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's rule does not have tribal implications. It affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is

not a significant regulatory action under Executive Order 12866.

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * * * * * *					
Colorado [2]	9.0	9.0	9.0	9.0	9.0
* * * * * * *					

[1] Standards are expressed in pounds per square inch (psi).
[2] From 1992 through 2001, the RVP standard for the former Denver-Boulder nonattainment area was 7.8 psi, but waived to 9.0 psi.

* * * * *

[FR Doc. 02–1493 Filed 1–23–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7132–3]

RIN 2060–AJ69

Amendments to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: With this action, due to the receipt of adverse comments, EPA is withdrawing two of the amendments to the requirements on variability in the composition of additives certified under the gasoline deposit control program that were included in the direct final rule published on November 5, 2001 (66 FR 55885). We will address these comments in a subsequent final action based on the parallel proposal published on November 5, 2001 (66 FR 55905).

DATES: The following provisions of the direct final rule published at 66 FR 55885 (November 5, 2001) are withdrawn as of January 24, 2002.

(1) The revision to 40 CFR 80.162(a)(3)(i)(B), and

(2) The revision to 40 CFR 80.162(a)(3)(ii).

ADDRESSES: Comments and other materials supporting this rulemaking are contained in Public Docket No. A–2001–15, at: Air Docket Section, U.S. Environmental Protection Agency, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4227; Fax (734) 214–4816; e-mail *herzog.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2001, EPA published a direct final rule entitled ''Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program'' (66 FR 55885) and a parallel proposed rule (66 FR 55905). This rule was intended to make four revisions to EPA's gasoline deposit control program that were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309). These notices were published by EPA as a result of a settlement agreement to resolve the Chemical Manufacturer Association's (now the American Chemistry Council) petition for judicial review of specific provisions of the gasoline deposit control program. Because EPA received adverse comment on two specific amendments contained in the direct final rule, we are withdrawing the two amendments on which we received adverse comments. We stated in the direct final rule that if we received adverse comments on one or more distinct amendments, paragraphs, or sections of the direct final rule by January 4, 2001, we would publish a timely withdrawal in the **Federal Register** indicating which amendments, paragraphs, and sections would become effective and which amendments, paragraphs, or sections would be withdrawn. We received adverse comments on the following two amendments in that direct final rule: the revision to 40 CFR 80.162(a)(3)(i)(B), and the revision to 40 CFR 80.162(a)(3)(ii). We will address these comments in a subsequent final action based on the parallel proposal

published on November 5, 2001 (66 FR 55905). As stated in the parallel proposal, we will not institute a second comment period on this action. The following two amendments that did not receive adverse comment will become effective on February 4, 2002, as provided in the November 5, 2001, direct final rule: 40 CFR 80.162(d), and 40 CFR 80.169(c)(4)(i)(C)(*2*).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–1756 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC 96–45; FCC 01–376]

Implementation of Interim Filing Procedures for Filings of Requests for Review

AGENCY: Federal Communications Commission.

ACTION: Temporary procedural requirements.

SUMMARY: In this document, the Commission waives its procedures for filing requests for review from decisions of the Universal Service Administrative Company (Administrator) and petitions for reconsideration and applications for review that arise from such proceedings and establishes the following interim procedures. We extend the period for filing a request for review, or applications for review arising from such proceedings, from the current 30 day period to 60 days, provide applicants with the option of electronic filing (via either electronic mail or facsimile) for requests for review and petitions for reconsideration or applications for review that arise from such proceedings, and provide parties that have mailed such pleadings on or after September 12, 2001 with an opportunity to refile their pleadings electronically. These measures will help to ensure continued timely processing of such filings and to avoid prejudice to parties as a result of the recent disruptions in mail service.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This Order, adopted December 20, 2001, and released December 26, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., S.W., Washington, DC 20554. The complete text is available through 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 at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication in the **Federal Register** and until further notice, we waive our filing procedures and establish the following procedures on an interim, emergency basis. First, requests for review filed pursuant to §§ 54.719 through 54.725, 47 CFR 54.719 through 54.725, and any applications for review arising from such proceedings shall be filed within 60 days of the issuance of the decision being reviewed. This 60-day period will be applicable to all such pleadings that were required to be filed on or after September 12, 2001 and were received by the Commission on or after September 12, 2001. Second, parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.

2. If filed by electronic mail, pleadings shall be filed at the following e-mail address: *CCBSecretary@fcc.gov.* Documents filed via electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. Pleadings submitted by electronic mail will be considered filed on a business day if they are received at the Commission on that day at any time up to 12:00 a.m. Pleadings received after that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered filed on a business day if the complete transmission is received by any time up to 12:00 a.m.

3. We further provide that pleadings of the type described in paragraph 1 above that were due on or after September 12, 2001 and that were submitted by non-electronic means between September 12, 2001 and the effective date of this order may be refiled electronically within 30 days of the effective date of this order in accordance with the procedures specified in the preceding paragraph. Pleadings filed electronically pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed, and providing the date the pleading was originally mailed to the Commission, and by what means. For this purpose only, the original pleading will be considered filed as of the date that it was mailed.

4. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this order and WAIVES any contrary requirements.

5. *It is further ordered* that the waiver shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1601 Filed 1–23–02; 8:45 am]

BILLING CODE 6712–01–U

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, parts 52 to 99, revised as of October 1, 2001, § 52.244–6 is corrected by adding the introductory text of paragraph (a), and paragraph (c) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

* * * * *

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

* * * * *

[FR Doc. 02–55500 Filed 2–23–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005245-2012-02; I.D. 092401C]

RIN 0648-AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2002 Specifications

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

ACTION: Final 2002 specifications for the Atlantic herring fishery.

SUMMARY: NMFS issues final specifications for the 2002 Atlantic herring fishery. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries, and to comply with the provisions in the Fishery Management Plan for Atlantic Herring (FMP), which require annual specifications for the fishery. This rule also corrects and clarifies the final rule implementing the FMP by clarifying the vessel owners' or operators' reporting requirements.

DATES: The amendment to § 648.7 is effective January 24, 2002; the specifications are effective January 24, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, Final Regulatory Flexibility Analysis, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2000 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at http:/www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP appear at 50 CFR part 648, subpart K. The FMP requires the New England Fishery Management Council (Council), with the Atlantic States Marine Fisheries Commission (Commission), to develop and recommend the following specifications annually: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The Council and Commission also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. A proposed rule to implement the 2002 Atlantic herring specifications was published in the Federal Register on October 29, 2001 (66 FR 54498), with a comment period ending November 28, 2001. The process used to develop the specifications was thoroughly described in the preamble to the proposed rule and is not repeated here.

Final 2002 Specifications

Specifications for the 2002 fisheries are provided below. The only changes from the 2001 specifications are an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change are discussed in the proposed rule and the EA/RIR for the 2002 herring specifications.

TABLE. SPECIFICATIONS AND AREA TACS FOR THE 2002 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10.000
	(Area 2 & Area 3)
IWP	10,000
USAP	20,000
BT	4,000
TALFF	0
Reserve	0
TAC-Area 1A	60,000
TAC-Area 1B	10,000
TAC-Area 2	50,000
	TAC reserve: 80,000)
TAC-Area 3	50,000

This rule also implements a change to § 648.7(b)(1)(iii)(B) and adds § 648.7(b)(1)(iii)(C) to clarify the Council's intent concerning the reporting requirements for owners or operators of vessels who have been issued Atlantic herring permits but who are not required to have a Vessel Monitoring System (VMS) unit on board the vessel. This rule clarifies that only owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring on any one trip in a week must submit an Atlantic herring catch report via the Interactive Voice Response (IVR) reporting system by Tuesday of the following week. Even if the herring has not yet been landed, the operator must estimate the amount of herring on board the vessel and report that amount via the IVR system. As currently written, the regulations imply that this provision applies at all times to any owner or operator of a vessel issued a Federal permit for Atlantic herring who is not required to have a VMS unit on board the vessel. In addition, this rule clarifies that owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week. As currently written, the regulations require that the reporting provision also applies at all times to vessels catching herring in or from the EEZ. A review of the FMP and background material germane to the issue shows that this clarifying change is consistent with Council intent.

Changes from the Proposed Rule

While the amounts of the specifications remain the same as those found in the proposed rule, the restriction in the proposed rule on JVP to Area 2 only has been modified to retain the 2001 restriction of JVP to Areas 2 and 3. JVP remains prohibited in Areas 1A and 1B. This change to the proposed rule is a result of comments regarding the proposed restriction, and is based on a determination that, on balance, net benefits to fishing will be enhanced by continuing to allow JVP activity in both Areas 2 and 3.

Comments and Responses

Eight sets of public comments were received on the proposed rule from two vessel owners, a Maine fisheries association, the State of Connecticut, the Mid-Atlantic Fishery Management Council, the Russian Federation, a U.S. JVP partner, and a shoreside processor.

Comment 1: Two vessel owners and a Maine fisheries association opposed the elimination of JVP in Area 3 because they believe it would remove an opportunity for U.S. vessels to fish for herring at a time when fishing for other species is restricted or unavailable to them. The MAFMC, a representative of a canned sardine company, and the State of Connecticut specifically recommended that 10,000 mt of JVP should be made available in both Areas 2 and 3. The State of Connecticut believes that preventing JVP in Area 3 could leave fish unharvested in Area 3 because it is not certain that U.S. shoreside processors will fully utilize the Area 3 TAC.

Response: In 2001, 50,000 mt of TAC was allocated to Area 3. As of December 1, 2001, 28,700 mt, or 57 percent of the Area 3 TAC had been delivered to shoreside processors. While this figure represents a substantial increase in shoreside deliveries from 13,065 mt in 2000, it appears unlikely that shoreside processors will utilize the entire Area 3 TAC of 50,000 mt in 2002, as the Council believed. While the increase in shoreside deliveries reflects the addition of a new herring processing facility in Gloucester, MA, it is still uncertain that U.S. processing capacity is sufficient to utilize the full Area 3 TAC of 50,000 mt. NMFS agrees with the State of Connecticut that, while the export sector of the domestic industry has further developed over the past year, removing opportunities for U.S. vessels to participate in JVP operations in Area 3 would cause economic hardships of varying degrees to those vessels. Also, net benefits to the fishery will likely be enhanced by continuing to allow JVP activity in both areas. Therefore, this final rule allocates JVP to both Area 2 and Area 3.

Comment 2: The Russian Federation commented that all products processed at sea by Russian vessels are sent to foreign markets in accordance with U.S. law. The Federation believes that allocating JVP and TALFF to Russia provides additional advantages to U.S. fishermen -- in particular, new possibilities for more profitable operations and full utilization of fishing capacities -- and also promotes rational use of marine resources. A U.S. partner of foreign fishing operations supported this view.

Response: Based on an increase of estimated DAH/DAP by 5,000 mt for Atlantic herring over last year's estimate, the estimated portion of 2002 OY not harvested by U.S. vessels is zero, and, therefore, TALFF is zero. The Council has concluded that TALFF, even in relatively small amounts, can compete with U.S. exports in limited global markets. The potentially negative economic impacts of competition with TALFF-caught fish is discussed in the RIR. However, an allocation of zero TALFF does not preclude opportunities for U.S. vessels to participate in JVP operations. NMFS accepts the Council's analysis and rationale; this final rule sets TALFF at zero.

Comment 3: A Maine fisheries association and a U.S. JVP partner suggested increasing JVP to 20,000 mt for Atlantic herring.

Response: NMFS believes that a JVP specification of 20,000 mt could potentially impact the development of shoreside processors and would not be consistent with the FMP. If the majority of a 20,000 mt JVP allocation is taken from Area 3, this would allow only approximately 30,000 mt of herring to be delivered to shoreside processors. Since those processors have almost taken this amount in 2001, this would not leave additional allocation for further development of shoreside processing capabilities. However, NMFS will continue to closely monitor harvest from the various sectors of the fishery throughout the year, and if shoreside production falls short of expectations, NMFS, in consultation with the Council, could increase JVP allocation at any time during the fishing year, if warranted.

Comment 4: A U.S. JVP partner recommended a separate herring allocation for the Maine purse seine fleet.

Response: A separate allocation for Maine purse seiners was not within the scope of this action and would require an amendment or framework to the FMP. The commenter would have to convince the Council that such an action has enough merit to direct staff to develop a sufficient number of alternatives and supporting analyses, given the Council's current list of priorities.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes the annual and management area 2002 TACs for the Atlantic herring fishery, which are used for the purpose of closing the fishery when the quotas are reached.

Framework 1 to the FMP, as approved by the Secretary, is published elsewhere in today's Federal Register, effective immediately. That action gives NMFS the authority to divide the TAC for Management Area 1A into two seasons to preserve the much larger traditional fishery that has occurred from June through December. The fishing year begins on January 1, and the TAC for the January through May period is being set as a percentage of the annual quota allocation established by this rule, currently equating to only 6,000 mt for the 2002 fishing year. As such, unless this rule, which establishes the annual specifications for herring, is made effective prior to, or at the same time as, Framework 1, then there exists no basis upon which to determine the January through May TAC. Thus, the ability to implement Framework 1 is completely dependent upon the effectiveness of this action; without this rule in place, the basis upon which Framework 1 is predicated does not exist. Accordingly, the AA finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30 day delayed effectiveness for these specifications, since doing so is likely to prove necessary in order to close Area 1A.

Additionally, waiving the 30 day delayed effectiveness for these specifications will relieve a restriction on JVP operations (i.e., U.S. harvesters delivering to foreign processors) who are currently waiting to deliver herring. Some of the foreign vessels who received herring from domestic fishermen in 2001 intend to engage in herring JVP operations in 2002, and are currently waiting to do so. However, until the herring specifications are finalized and these foreign vessels are permitted, they are prohibited from doing so. Thus, a delay in the effectiveness of this action would prolong a restriction upon those vessels, while making these specifications immediately effective will serve to relieve the existing restriction. Therefore, there exists authority under 5

U.S.C. 553(d)(1) to waive the 30-day delayed effectiveness period for this rule.

NMFS prepared a final regulatory flexibility act analysis (FRFA) for this action. A copy of the FRFA, which incorporates the IRFA, is available from the Council (see **ADDRESSES**). A summary of the FRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the preamble to the proposed rule and are not repeated here. This action does not contain new reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Eight sets of public comments were received on the proposed rule. None of the comments directly addressed the results of the IRFA. However, comments 1 through 3 addressed economic impacts to vessels and shoreside processors. Responses to those comments are provided in the preamble of this final rule.

Number of Small Entities

All of the affected businesses (fishing vessels and dealers) are considered small entities. The last full year of data available for the herring fishery is the year 2000. There were 169 vessels, 6 processors, and 104 dealers participating in the fishery in 2000.

Minimizing Economic Impacts on Small Entities

The only change from the 2001 specifications is an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change in DAP could benefit domestic processors because domestic shoreside processing has increased recently. The impacts were discussed in the proposed rule published on October 29, 2001 (66 FR 54498) and in the EA/RIR/IRFA for the 2002 herring specifications. The Regulatory Flexibility Act requires an agency to consider alternative measures that would mitigate adverse economic impacts to small businesses. While this action would eliminate TALFF fees to the Nation and decrease the profitability of foreign fishing vessels that previously participated in JVP/TALFF operations, it would not have an adverse economic impact on U.S. herring processors or other U.S. small businesses as compared to the status quo, which allocates 5,000 mt of TALFF and would have a negative impact on U.S. processors who are attempting to penetrate emerging markets for herring. The Council also considered a specification of 20,000 mt of TALFF and concluded that this level of TALFF would also cause significant negative impacts on U.S. processors by competing directly with the U.S. export market for herring. NMFS did not adopt the recommendation of the Council to limit JVP to Area 2, because it is likely there would be significant negative economic impacts to several vessels in 2002 that participated in Area 3 JVPs in 2001. However, NMFS did not adopt Council non-preferred alternatives that would have increased JVP up to 50,000 mt because amounts over the 10,000 mt preferred specification of JVP could limit the supply of herring going to U.S processors while providing foreign nations with additional amounts of herring to sell into emerging markets in direct competition with U.S. exports.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a permit holder letter that also serves as a small entity compliance guide was prepared. The guide (i.e., permit holder letter) will be sent to all holders of permits issued for the Atlantic herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and are also available at the following web site http://www.nero.nmfs/gov/ro/doc/nero.html.

This action clarifies a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0212. Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.7, paragraph (b)(1)(iii)(B) is revised, paragraph (b)(1)(iii)(C) is redesignated as paragraph (b)(1)(iii)(D), and a new paragraph (b)(1)(iii)(C) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

* * * * *

[FR Doc. 02–1761 Filed 1–18–02; 3:41 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011221308-1308-01; I.D. 112101A]

RIN 0648-AP44

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 1

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures contained in Framework Adjustment 1 to the Atlantic Herring Fishery Management Plan (FMP). This final rule modifies the annual specification of herring quota for Management Area 1A by establishing two quota periods. The intent of this final rule is to cap the landings of herring from Area 1A during the winter/spring (January through May) season so that more annual quota will be available to vessels fishing during the summer/fall (June through December) peak demand season.

DATES: Effective January 24, 2002.

ADDRESSES: Copies of Framework Adjustment 1 to the Atlantic Herring FMP, including the Environmental Assessment (EA), and Regulatory Impact Review (RIR) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at http://www.nero.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281-9103, fax (978) 281-9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: This final rule implements the measures contained in Framework 1 to the FMP. These measures require annual specification of herring quotas for two seasonal fishing periods for Management Area 1A (January - May and June - December). The annual quota (TAC) for each period will be established each year through the existing annual specifications' process outlined in 50 CFR 648.200. The annual Atlantic herring specifications for fishing year 2002 are published elsewhere in this edition of the Federal Register. This final rule also modifies the 2002 Area 1A TAC of 60,000 mt by allocating 6,000 mt to the January - May period, leaving 54,000 mt for the June - December period. The annual 2002 TAC for Area 1A would remain unchanged. The intent of this final rule is to modify the 2002 Area 1A TAC upon implementation of the 2002 specifications. Complementary action is being proposed for implementation by the states through the Atlantic States Marine Fisheries Commission's Atlantic Sea Herring Interstate FMP (IFMP).

Prior to this modification, the FMP required NMFS to close the directed herring fishery in a management area when 95 percent of the TAC for that area is harvested. Management area TACs were established by the states under the IFMP for the 2000 fishing year, and by NMFS under the FMP for the 2001 fishing year (66 FR 28846). Therefore, 2000 was the first year landings from Area 1A were constrained by the TAC. The traditional peak demand for herring coming from Area 1A occurs during June - November, when the primary use is for lobster bait. In both 2000 and 2001, the TAC was attained prior to the end of November (October 27, 2000 under the ASMFC Plan; November 10, 2001 under the Atlantic Herring FMP (66 FR 56041), respectively).

Over the past year, the New England Fishery Management Council (Council) and its Herring Oversight Committee discussed at several meetings the various proposed alternatives to address the industry's concerns, including limited entry or controlled access in Area 1A. Causes of the early attainment of the TAC in Area 1A, include excessive harvesting capacity of the herring fleet given Area 1A TAC levels specified in recent years, and the lower cost for vessels from Maine, New Hampshire, and Massachusetts to harvest herring from Area 1A compared to other areas located farther offshore. These vessels are induced to concentrate their effort in Area 1A in order to maximize profits, provided the fish are available in sufficient quantities. As a result, the herring TAC is reached earlier than desired by the fleet as a whole. For several years, the Council has considered developing an amendment to the FMP to establish a limited entry or controlled access program to address the capacity issue. However, other fishery issues have been identified as having higher priority, at least through 2002. Therefore, the Council developed Framework 1 to address the problem for the near future.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR 648.206. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, where comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analysis and provide an opportunity to comment on them, specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to NMFS that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary. For this action, the Council recommended, and NMFS concurred after review of current circumstances in this fishery as further explained in the classification section of the final rule, that the measures be published as a final rule.

The initial and final meetings for Framework 1 at which public comment was received were on July 24-26, 2001, and September 25-27, 2001, respectively. The Council's Herring Oversight Committee and Herring Advisory Panel also met in August, between the two Council meetings, to take public comments and to discuss the action under consideration. Documents summarizing the Council's proposals and the analysis of biological, economic and social impacts were available for public review one week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to and during the final meeting. The Council received no written comments on the proposed action.

Classification

The fishing year for the Atlantic herring fishery begins on January 1, and the TAC for the January - May period is being set at only 6,000 mt for the 2002 fishing year in this final rule. Because herring are currently plentiful in Area 1A and landings data from the fishery indicate that significant catches are being made, the TAC may be reached within a few weeks. Without this rule in place, NMFS would have no authority to close the directed herring fishery once 95 percent of the seasonal TAC is attained. Furthermore, NMFS needs some lead time before a closure is effected in order to notify industry of the closure. Therefore, it is essential that this action be implemented as quickly

as possible in order to avoid exceeding the TAC for the first quota period, which would defeat the purpose of the action, as described in the preamble to this final rule. Therefore, the Assistant Administrator for NOAA (AA) finds that the July 24-26, 2001, and the September 25-27, 2001, Council meetings provided adequate prior notice and opportunity for public comment and, because any further delay could result in the seasonal TAC for the first quota period being exceeded, further notice and opportunity for public comment are impracticable. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive additional opportunity for prior public comment.

The AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this final rule. The TAC for the 2002 fishery for Management Area 1A implemented in the 2002 Atlantic Herring specifications (published elsewhere in this edition of the Federal Register) is 60,000 mt. This action modifies the annual specification for Management Area 1A by establishing two quota periods so that more annual quota will be available to vessels fishing during the summer/fall peak demand season. Because this action caps the landings of herring from Area 1A during the January - May season, state agencies and fishers must be notified of the new cap in order to plan accordingly. In order for industry to plan accordingly for the upcoming fishing year, this modification of the annual specifications for the herring fishery must be published on or about January 1. Further, as explained in the preceding paragraphs, the availability of herring in Area 1A in January 2002 and preliminary landings information from the industry indicate that the directed fishery in Area 1A may need to be closed within a few weeks. Without this final rule's measures in place, the authority to close the fishery at 95 percent of the 6000 mt TAC in Area 1A would not exist, and the expected benefits of this action would be lost in 2002. As such, it is contrary to the public interest and impracticable to delay effectiveness for 30 days.

Because a prior notice and opportunity for public comment is not required for this final rule under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This final rule has been determined not to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.200, the first two sentences of paragraph (a) are revised to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually, but no later than July, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.202(f). * * *

* * * * *

3. In § 648.202, the first sentence of paragraphs (a) is revised, and paragraph (f) is added to read as follows:

§ 648.202 Total allowable catch (TAC) controls

(a) If NMFS determines that catch will reach or exceed 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. * * *

* * * * *

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A shall be set through the annual specification process described in § 648.200.

[FR Doc. 02–1762 Filed 1–18–02; 3:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011702A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District (Statistical Area (area) 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2002 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to prevent exceeding the A season HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2002 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., September 1, 2002. The first directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t., January 23, 2002, until 1200 hrs, A.l.t., January 28, 2002. The second directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t.,

January 30, 2002, until 1200 hrs, A.l.t., February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of Atka mackerel TAC for non-jig gear in the Eastern Aleutian District and the Bering Sea subarea is 2,518 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). See § 679.20 (a)(8)(ii).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of TAC for non-jig gear Atka mackerel in the Eastern Aleutian District (Area 541) and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,918 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

In accordance with § 679.20 (a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543. The opening is to occur 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has establish the opening date for the second HLA directed fisheries as 48 hours after the closure of the first HLA fisheries in both 542 and 543. Consequently, NMFS is opening directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the **DATES** section of this publication.

In accordance with § 679.20 (a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the platoon or platoons associated with the directed fishery or fisheries for which they have been registered. NMFS has notified the operator of each vessel as to which platoon each vessel has been assigned by NMFS. (See the notification appearing in this publication of the **Federal Register**.)

In accordance with § 679.20 (a)(8)(ii)(C)(1), the A season harvest limit of the seasonal TAC in areas 542 and 543 are 6,605 mt and 5,467 mt respectively. Based on those seasonal apportionments and the proportion of the number of vessels in each platoon compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543 during the A season, the harvest limit for each HLA directed fisheries for areas 542 and 543 are as follows: For the first directed fishery in area 542: 3,302 mt; for the first directed fishery in area 543: 2,733 mt; for the second directed fishery in area 542: 3,302 mt; for the second directed fishery in area 543: 2,733 mt. In accordance with § 679.20 (a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the platoons participating in the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this action.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season allowance of the 2002 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and to prevent exceeding the A season HLA limit of the 2002 TAC of Atka mackerel allocated to the Central and Western Aleutian Districts constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season allowance of the 2002 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and to prevent exceeding the A season Atka mackerel HLA harvest limits established for the Central (area 542) and Western (area 543) Aleutian Districts constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1759 Filed 1–18–02; 3:05 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011702B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Platoons in Areas 542 and 543

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

ACTION: Notification

SUMMARY: NMFS is notifying operators of registered vessels of their platoon assignments for the Atka mackerel fishery in harvest limit areas (HLA) in Statistical Area (area) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the A season HLA limits established for area 542 and area 543 pursuant to the 2002 Atka mackerel total allowable catch and associated Steller sea lion protection measures.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 18, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the emergency rule implementing 2002 harvest specifications and Steller sea lion protection measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002), NMFS established HLAs for Atka mackerel directed fishing in areas 542 and 543. Operators of vessels had until January 15, 2002, to register to fish in the HLA in area 542 and/or 543. NMFS is required to randomly assign vessels between these areas to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time.

In accordance with § 679.20(a)(8)(iii)(A), operators of eight vessels using trawl gear for directed fishing for Atka mackerel have registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B) the Administrator, Alaska Region has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which the vessel operators have registered and is now notifying each vessel operator of the assignment.

Vessels assigned to Platoon A that will participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery for area 543 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: Federal Fishery Permit number (FFP) 2733 Seafreeze Alaska; FFP 4093 Alaska Victory; FFP 3835 Seafisher; and FFP 3819 Alaska Spirit.

Vessels assigned to Platoon B that will participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery for 542 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: FFP 2443 Alaska Juris; FFP 3400 Alaska Ranger; FFP 2134 Ocean Peace; and FFP 3423 Alaska Warrior.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action that notifies each vessel of their platoon assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion that notifies each vessel of their platoon assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1760 Filed 1–18–02; 3:05 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 16
Thursday, January 24, 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.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–063–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties in Texas to the list of regulated areas. The interim rule, which followed the detection of bunted kernels in samples taken from bins of wheat grain stored in Baylor County and harvested in Archer and Baylor Counties, was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States.

EFFECTIVE DATE: This interim rule became effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Director for Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 98, Riverdale, MD 20737–1231; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 13, 2001, and published in the **Federal Register** on July 19, 2001 (66 FR 37575–37576, Docket No. 01–063–1), we amended the Karnal bunt regulations in 7 CFR 301.89–3 by adding Archer and Baylor Counties, in their entirety, to the list of regulated areas in Texas. This action was necessary due to the detection of bunted wheat kernels in samples taken from bins of wheat grain stored in Baylor County. The wheat grain was harvested in Archer and Baylor Counties.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding Archer and Baylor Counties, TX, to the list of regulated areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. The entities most likely to have been affected by the interim rule are wheat producers. The size of these entities is unknown. It is reasonable to assume, however, that most have gross annual receipts of less than $750,000 and are, therefore, small in size according to the U.S. Small Business Administration's criteria. This assumption is based on composite data from the 1997 Census of Agriculture, which reports that wheat was harvested for grain from 50,167 acres on 159 farms in Archer County in 1997; that grain had a market value of $4.161 million. In Baylor County, wheat was harvested for grain from 84,368 acres on 166 farms in 1997; that grain had a market value of $6.686 million.

Producers in regulated areas may grow Karnal bunt host crops, but the wheat, durum wheat, or triticale must be tested for Karnal bunt before the harvested crop is moved from the field in which it was grown. This required testing is provided to producers free of charge. Negative-testing grain may be moved out of the regulated area without restriction. Grain found to contain bunted kernels may be moved outside a regulated area only under a limited permit and only to a specified destination for specified handling, utilization, or processing that will mitigate the Karnal bunt risk associated with the grain.

Compensation has been made available to producers in regulated areas to address the loss in value of positive-testing grain. As the 2000–2001 crop season was the first regulated crop season for Archer and Baylor Counties, producers there were eligible for compensation payments of up to $1.80 per bushel. Those payments have, in many cases, already been made to producers affected by the detection of Karnal bunt in Archer and Baylor Counties, thus limiting the negative effects of Karnal bunt infection and the subsequent regulatory restrictions intended to prevent the further spread of the disease.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 66 FR 37575–37576 on July 19, 2001.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC. this 16th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1748 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No.01–019F]

RIN 0583–AC89

Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2002

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These increases in fees reflect the national and locality pay raise for Federal employees (the increase of 3.6 percent anticipated at the time of the proposal to be effective January 2002) and inflation. At this time, FSIS is not changing the fee for the Accredited Laboratory Program. To raise the fees for voluntary egg products inspection (base time) and overtime and holiday voluntary inspection activities, done on other than a continuous resident basis, the Agency is adding Part 592 to the CFR. At this time, FSIS is only including the voluntary egg products inspection fees in this new part. The Agency is also amending the heading of Subchapter I of Chapter III of the CFR by deleting the word ''Act'' so the heading reads ''Egg Products Inspection'' because voluntary inspection of egg products is performed under the Agricultural Marketing Act (AMA).

DATES: The final rule is effective January 27, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations and Directive Development Staff, Office of Policy, Program Development and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

For information concerning fees, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Drop 5262 Beltsville, MD 20705, (301) 504–5885.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments, meat and poultry processed at official establishments and egg products processed at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*)(AMA), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for October 1, 2001 to September 30, 2002, the Agency has identified increases in the costs of these inspection services due specifically to the national and locality pay raise for Federal employees (the increase of 3.6 percent anticipated at the time of the proposal to be effective January 2002) and inflation.

FSIS calculated the new fees by adding the projected increase in salaries and inflation for FY 2001 and FY 2002 to the actual cost of the services in FY 2000. The Agency calculated inflation to be 2.0% for FY 2001 and 2.0% for FY 2002. The Agency considered the costs that it will incur because of the pay raise in January 2002 and averaged its pay costs out over the entire FY 2002.

FSIS did not use the fees currently charged as a base for calculating the new fees for FY 2002 because the current fees are based on estimates of costs to the Agency for FY 2001 and FY 2002. The Agency now knows the actual cost of inspection services for FY 2000 and used the actual costs in calculating the new fees.

The current and new fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND NEW FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

[Except for voluntary inspection of egg products]

Service	Current rate	New rate
Base time	$38.44	$42.64
Overtime & holiday	41.00	44.40
Laboratory	60.44	68.32

The differing new fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors, including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES IN TABLE 1

Base Time:	
Actual FY 2000 cost	$39.67
Inflation and salary increases	2.95
Adjustment for divisibility by quarter hours	.02
Total	$42.64
Overtime and Holiday Inspection Services:	
Actual FY 2000 cost	$41.32
Inflation and salary increases	3.07
Adjustment for divisibility by quarter hours	.01
Total	$44.40
Laboratory Services:	
Actual FY 2000 cost	$63.59
Inflation and salary increases	4.73
Total	$68.32

FSIS is also raising the fees for its voluntary inspection of egg products for base time, which are currently set forth in § 55.510 (b) of Title 7 of the Code of Federal Regulations (CFR), from $33.64

to $42.64 per hour per program employee and for overtime and holiday inspection which is currently set forth in § 55.510 (c) of Title 7 of the CFR from $35.52 to $44.40 per hour per program employee. The differing proposed fees for basetime services and for holiday and overtime services is due to the different amount that it costs FSIS to provide those services. These differences in cost stem from various factors, which include the differing salary levels of the program employees who perform the services. These fees have not been changed in six years. Additionally, in conjunction with the new fee increase for the voluntary inspection of egg products, FSIS is adding provisions that delineate the types of services that would be considered to be overtime or holiday work.

When the regulations governing the mandatory inspection of egg products were transferred to Title 9 of the Code of Federal Regulations (CFR) on December 31, 1998 (63 FR 72352), the regulations governing the voluntary inspection of egg products were not also transferred. FSIS, however, does perform voluntary inspection of egg products, and certain other products, under the AMA. The Agency is now adding part 592 to Title 9 of the CFR which contains the fees for basetime and overtime and holiday voluntary inspection of egg products, as well as an explanation of what services are considered to be overtime and holiday work. Further, the Agency is amending the heading of Subchapter I of Chapter III of the CFR by deleting the word ''Act'' so the heading will be ''Egg Products Inspection.''

At this time, FSIS is only including in part 592 of Title 9 of the CFR the base time fee scheme and the overtime and holiday fee scheme for the voluntary inspection of egg products that is done on other than a continuous resident basis. In a separate rulemaking, the Agency will propose to include in Title 9 of the CFR other provisions of the voluntary inspection of egg products regulations. FSIS will coordinate this effort with AMS.

The Agency must recover the actual cost of voluntary inspection services covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's costs.

Proposed Rule and Comments

On October 16, 2001, FSIS published a proposed rule (66 FR 52548) to increase the fees it charges for meat, poultry, and egg products voluntary, overtime, and holiday inspection services. The Agency provided 30 days for public comment, ending on November 11, 2001. FSIS received no comments on the proposed rule. The Agency believes that adequate notice has been given to affected parties. The Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register** in order for FSIS to recover the costs of the services provided and reduce the possibility of monetary losses for the Agency. Therefore, the increases in fees will be effective January 27, 2002.

Summary of the Final Rule

FSIS is amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $38.44 to $42.64 per hour per program employee. The Agency is also amending §§ 391.3, 590.126, and 590.128(a) to increase the rate for providing meat, poultry, and egg products overtime and holiday inspection services from $41.00 per hour per employee to $44.40 per hour per employee. Additionally, FSIS is amending § 391.4 to increase the rate for laboratory services from $60.44 per hour per employee to $68.32 per hour per employee. Further, the Agency is adding part 592 to the CFR to increase the rate for the voluntary inspection of egg products for base time from $33.64 to $42.64 per hour per employee and for overtime and holiday inspection from $35.52 to $44.40 per hour per program employee. FSIS is also amending the heading of Subchapter I of Chapter III of the CFR by deleting the word ''Act'' so the heading reads ''Egg Products Inspection'' because voluntary inspection of egg products is performed under the AMA.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments and plants should not be affected adversely by the increases in fees because the new fee increases provided for, in general, reflect only a small increase in the costs currently borne by those entities that choose to use the inspection services for which fees are being raised. Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. The inspection services that the fee increases effect are generally used by larger establishments and plants because of their larger production volume, the greater complexity and diversity of the products that they produce, and the need of their clients (large commercial or institutional establishments) for on-time delivery of large volumes of product.

Establishments and plants that seek the Agency's services are likely to have calculated that the incremental costs of overtime and holiday inspection services will be less than the incremental expected benefits of additional revenues that they would realize from additional production.

Economic Effects

As a result of the new fees, the Agency expects to collect an estimated $101 million in revenues for FY 2002, compared to $94 million under the current fee structure. The costs that industry will experience by the raise in fees are similar to other increases that the industry faces because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2000 was about 82 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, March 28, 2001). The total volume of U.S. egg product production in 2000 was about 2.3 billion pounds (2001 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the proposed fees increases is, in general, $.00008. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the proposed fee increases to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System of U.S. Demand for Food. USDA/ERS Technical Bulletin No 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update.* FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information, or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.;* 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $42.64 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $44.40 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $68.32 per hour per program employee.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

3. The authority citation for Part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

4. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $44.40.

5. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $44.40.

* * * * *

6. Revise the heading of Subchapter I to read as follows:

SUBCHAPTER I—EGG PRODUCTS INSPECTION

7. Add part 592 to Subchapter I to read as follows:

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

Sec.

592.1 Scope and purpose.
592.2 Base time rate.
593.3 Overtime rate.
593.4 Holiday rate.

Authority: 7 U.S.C. 1621–1627.

§ 592.1 Scope and purpose.

The fees that shall be charged for, and collected by the Food Safety and Inspection Service for the voluntary base time, overtime, and holiday time inspection services of egg products as provided by FSIS on other than a continuous resident basis shall be at the applicable rates, and on the basis set forth in §§ 592.2 through 592.4 below, in lieu of that for such services set forth in 7 CFR part 55. The fees and charges for such services shall be paid by check, draft, or money order to the Food Safety and Inspection Service.

§ 592.2 Base time rate.

The base time rate for voluntary inspection services of egg products is $42.64 per hour per program employee.

§ 592.3 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $44.40.

§ 592.4 Holiday rate.

When an official plant requires voluntary inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period

and must pay the Agency for such holiday work at an hourly rate of $44.40.

Done at Washington, DC, on January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–1751 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG87

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 28, 2002, for the direct final rule that appeared in the **Federal Register** of November 14, 2001 (66 FR 56982). This direct final rule amended the NRC's regulations by revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS was also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. This document confirms the effective date.

DATES: The effective date of January 28, 2002, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (http://ruleforum.llnl.gov). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–8126 (e-mail: *mlh1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On November 14, 2001 (66 FR 56982), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 to revise the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1026. Amendment No. 2 modified the Technical Specifications (TS) to allow the W74 canister to be placed in the transfer cask instead of the spent fuel pool until the affected storage cask is repaired or replaced. The TS were also modified to clarify the description of the other non-fissile material permitted to be stored in the W74 canister and to revise the temperatures to correspond to the liner thermocouples. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 17th day of January, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–1719 Filed 1–23–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 01P–0304]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Ingestible Telemetric Gastrointestinal Capsule Imaging System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the ingestible telemetric gastrointestinal capsule imaging system device into class II (special controls). The special controls that will apply to this device are set forth below. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carolyn Neuland, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

On June 11, 2001, FDA received a petition submitted under section 513(f)(2) of the act by Given Imaging, Ltd., through Hogan & Hartson, L.L.P., seeking an evaluation of the automatic class III designation of its GIVEN Diagnostic Imaging System (GIVEN System). In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the GIVEN System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the GIVEN System can be classified in class II with the establishment of special controls. This device is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Biocompatibility; (2) electrical and mechanical safety; (3) radio-frequency radiated power and electromagnetic compatibility, including interference with other medical devices and with this device (e.g., interference with image acquisition); (4) functional reliability, including structural integrity and image acquisition; (5) intestinal obstruction or injury; and (6) misinterpretation of the captured images. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA.''

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including testing standards for biocompatibility, and electrical and mechanical performance. The class II special controls guidance also includes appropriate prescription and patient labeling. FDA believes that adherence to the class II special controls addresses the risks to health identified above and provides a reasonable assurance of the safety and effectiveness of the device.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. FDA review of key design features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the ingestible telemetric gastrointestinal capsule imaging system before marketing the device.

On August 1, 2001, FDA issued an order classifying the GIVEN System and substantially equivalent devices of this generic type into class II under the generic name, ingestible telemetric gastrointestinal capsule imaging system. FDA identifies this generic type of device as an ingestible telemetric gastrointestinal capsule imaging system, which is intended for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities in the small bowel.

FDA is codifying this device by adding § 876.1300. The order also identifies a special control applicable to this device a guidance document entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA.''

II. Electronic Access

In order to receive the guidance entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA'' via your fax machine, call the 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 enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1385) followed by the pound sign (#). 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 an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, 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 device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging System; Final Guidance for Industry and FDA'' is available on the Internet at http://www.fda.gov/cdrh/ode/guidance/1385.pdf.

III. 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.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory 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 it 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. FDA knows of only one manufacturer of this type of device.

Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant 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 is not required.

V. 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 order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

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

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

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

2. Section 876.1300 is added to subpart B to read as follows:

§ 876.1300 Ingestible telemetric gastrointestinal capsule imaging system.

(a) *Identification.* An ingestible telemetric gastrointestinal capsule imaging system is used for visualization of the small bowel mucosa as an adjunctive tool in the detection of abnormalities of the small bowel. The device captures images of the small bowel with a wireless camera contained in a capsule. This device includes an ingestible capsule (containing a light source, camera, transmitter, and battery), an antenna array, a receiving/recording unit, a data storage device, computer software to process the images, and accessories.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance, ''Class II Special Controls Guidance Document: Ingestible Telemetric Gastrointestinal Capsule Imaging Systems; Final Guidance for Industry and FDA.''

Dated: January 14, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–1722 Filed 1–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 15

RIN 2900–AJ63

Delegations of Authority—Equal Employment Opportunity (EEO) Responsibilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document delegates to certain Department of Veterans Affairs (VA) officials authority to supervise and control the operation of the administrative Equal Employment Opportunity (EEO) Discrimination Complaint Processing System; to make procedural decisions to accept or dismiss discrimination complaints; to decide breach of settlement agreement claims; to resolve claims of dissatisfaction with the processing of previously filed discrimination complaints; to make under limited circumstances substantive final agency decisions; and take final agency action following an Equal Employment Opportunity Commission (EEOC) Administrative Judge's decision; and to monitor agency compliance with orders and decisions of the Office of Employment Discrimination Complaint Adjudication (OEDCA) and EEOC. The document also requires that any complaint filed against the Secretary or Deputy Secretary based upon personal actions or decisions by these officials as opposed to ministerial actions will be transferred to another Federal agency for processing and adjudication on a cost reimbursable basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Management is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

DATES: *Effective Date:* January 24, 2002.

FOR FURTHER INFORMATION CONTACT: James S. Jones, Deputy Assistant Secretary for Resolution Management, 202–501–2800.

SUPPLEMENTARY INFORMATION: When the Department's EEO complaint resolution process was reorganized several years ago, a cumbersome regulation was promulgated which outlined a transitional process for the transfer of procedural decision making authority from the Office of General Counsel to the Office of Resolution Management (ORM). Since that time, the authority transfer has been completed, and there is no further need for the bifurcated authority in the regulation. It is rescinded by this document, and in its place new regulations delegate a series of authorities to manage the employment discrimination complaint resolution process; to make procedural decisions to accept or dismiss complaints; to decide claims of breach of settlement agreement; to resolve claims of dissatisfaction related to the processing of a previously filed employment discrimination complaint; to make limited substantive final agency decisions and to take final agency action following an EEOC Administrative Judge's decision; to monitor agency compliance with the orders and decisions of OEDCA and EEOC; and to transfer to another federal agency for processing and adjudication any complaints filed against the Secretary or Deputy Secretary based upon their personal actions or decisions rather than ministerial actions.

The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO discrimination complaint processing within the Department. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and Regional EEO Officers/Field Managers are delegated authority to accept or dismiss discrimination complaints filed by employees, former employees, and applicants for employment. The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are also

delegated authority to decide breach of settlement agreement claims, resolve claims which express dissatisfaction with the processing of a previously filed employment discrimination complaint, and to monitor agency compliance with the orders and decisions of OEDCA and EEOC.

The Director and Associate Director of OEDCA are delegated authority to make procedural decisions to accept or dismiss employment discrimination complaints filed by employees, former employees and applicants for employment that may be pending before OEDCA, where the interests of administrative complaint processing efficiency may be best served by OEDCA making such decisions. The Director and Associate Director are also delegated authority to dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment against ORM; to decide all breach of settlement claims raised by ORM employees, former employees, or applicants for employment; to consider and resolve claims by ORM employees, former employees, and applicants for employment that express dissatisfaction with the processing of previously filed complaints; and to make procedural decisions to accept or dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment, where ORM must recuse itself because of an actual, apparent, or potential conflict of interest.

The Chairman, Board of Contract Appeals, is delegated authority to make procedural decisions to accept or dismiss, in whole or in part, discrimination complaints filed by employees, former employees, and applicants for employment and to make substantive decisions and take final agency actions following a decision by an EEOC Administrative Judge in cases where OEDCA has recused itself due to an actual, apparent, or potential conflict of interest.

Where an EEO complaint is based upon the personal actions or decisions of the Secretary or Deputy Secretary rather than ministerial acts, the complaint will be transferred to another Federal agency for processing and adjudication on a cost reimbursement basis. This document also makes changes to reflect that the Deputy Assistant Secretary for Resolution Mangement is responsible for coordinating activities regarding allegations of discrimination on the basis of handicap in programs and activities conducted by VA.

This document is published without regard to the notice and comment and effective date provisions of 5 U.S.C. 553 since it relates to agency management and personnel.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 15

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Approved: January 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 2 and 15 are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

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

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729; 44 U.S.C. 3702, unless otherwise noted.

2. Section 2.6 is amended by:

A. Removing paragraph (e)(6);

B. Redesignating paragraphs (e)(7) through (e)(12) as paragraphs (e)(6) through (e)(11), respectively;

C. Adding paragraphs (h), (i), (j), and (k) immediately following the authority citation for paragraph (g).

The additions and revisions read as follows:

§ 2.6 Secretary's Delegations of Authority to Certain Officials (38 U.S.C. 512).

* * * * *

(h) *Delegations to Office Resolution Management Officials (ORM).* (1) The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO Discrimination Complaint Processing System within the Department.

(2) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and all Regional EEO Officers/Field Managers are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints based upon race, color, national origin, sex, religion, age, disability, or reprisal filed by employees, former employees, or applicants for employment.

(3) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to make agency decisions on all breach of settlement claims raised by employees, former employees, and applicants for employment.

(4) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to consider and resolve all claims raised by employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to monitor compliance by Department organizational components with orders and decisions of the OEDCA and the EEOC.

(i) *Delegations to officials of the Office of Employment Discrimination Complaint Adjudication (OEDCA).* (1) The Director and Associate Director, OEDCA, are delegated authority to make procedural decisions to dismiss, in whole or in part, any EEO discrimination complaint filed by any employee, former employee, or applicant for employment that may be pending before OEDCA, where administrative complaint processing efficiency may be best served by doing so.

(2) The Director and Associate Director, OEDCA, are delegated authority to dismiss, in whole or in part any EEO discrimination complaint based upon race, color, religion, sex, national origin, age, disability, or reprisal filed by any ORM employee, former employee, or applicant for employment.

(3) The Director and Associate Director, OEDCA, are delegated authority to make the agency decision on all breach of settlement claims raised by ORM employees, former employees, and applicants for employment.

(4) The Director and Associate Director, OEDCA, are delegated authority to consider and resolve all claims raised by ORM employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Director and Associate Director, OEDCA, are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints filed by employees, former employees, or applicants for employment where the ORM must recuse itself from a case due to an actual, apparent, or potential conflict of interest.

(j) *Delegation to the Chairman, Board of Contract Appeals.* In cases where OEDCA has recused itself from a case due to an actual, apparent, or potential conflict of interest, the Chairman, Board of Contract Appeals, is delegated authority to make procedural agency decisions to dismiss, in whole or in part, EEO discrimination complaints filed by agency employees, former employees, and applicants for employment; to make substantive final agency decisions where complainants do not request an EEOC hearing; and to take agency action following a decision by an EEOC Administrative Judge.

(k) *Processing complaints involving certain officials.* A complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural acceptability review, investigation, and substantive decisionmaking to another Federal agency (e.g., The Department of Justice) pursuant to a cost reimbursement agreement. Referral will not be made when the action complained of relates merely to ministerial involvement in such matters (e.g., ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, assistant secretaries, or staff office heads).

PART 15—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERANS AFFAIRS

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

Authority: 29 U.S.C. 794, unless otherwise noted.

§ 15.170 [Amended]

4. In § 15.170, paragraph (c) is amended by removing ''Equal Employment Opportunity'' each time it appears, and adding, in its place, ''Resolution Management''.

[FR Doc. 02–1735 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7130–9]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this direct final action, EPA is approving the State of Colorado's request to relax the federal Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline supplied to the Denver/Boulder area (hereafter ''Denver area'') from June 1st to September 15th (the ozone control season) of each year. This action amends our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch (''psi'') to 9.0 psi. EPA has determined that this change to our federal RVP regulations is consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

DATES: This direct final rule is effective on March 25, 2002 without further notice, unless EPA receives substantive adverse comments by February 25, 2002. If substantive adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov

SUPPLEMENTARY INFORMATION:

Plain language: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean the Environmental Protection Agency.

Regulated Entities: Entities potentially affected by this rule are fuel producers and distributors. Regulated categories include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, gasoline retailers and wholesale purchaser-consumers.

To determine whether you are affected by this rule, you should carefully examine the requirements in section 80.27(a)(2) of title 40 of the Code of Federal Regulations (''CFR''). If you have any questions regarding the applicability of this action to a particular entity, you should consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking: A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area.*

I. Background

A. History of Gasoline Volatility Regulation

In 1987, we determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline,

referred to as volatile organic compounds (''VOCs''), are precursors for the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lung sensitization to other pollutants.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is the Reid Vapor Pressure (''RVP''). Under authority in section 211(c) of the Clean Air Act (CAA), we promulgated regulations on March 22, 1989, that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1 to September 15. These regulations were referred to as Phase I of a two-phase nationwide [1] program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season.[2] On June 11, 1990, we promulgated more stringent volatility controls for Phase II.[3] These requirements established volatility standards of 9.0 psi and 7.8 psi maximum RVP (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone National Ambient Air Quality Standard or ''NAAQS'') during the ozone control season.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires us to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. It further requires us to establish more stringent RVP standards in non-attainment areas if we find such standards ''necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.'' Section 211(h) prohibits us from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone non-attainment area redesignated to attainment.

On December 12, 1991, we modified our Phase II volatility regulations to be consistent with section 211(h) of the CAA.[4] The modified regulations prohibit the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as non-attainment, the regulations retained the original Phase II standards published in 1990.[5]

As stated in the preamble for the Phase II volatility controls,[6] and reiterated in the proposed change to the volatility standards published in 1991,[7] we will rely on States to initiate changes to our volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.[8] In those rulemakings, we explained that the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi for some month or months in a non-attainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. We have approved such petitions to amend the federal RVP regulations for South Carolina [9] and Tennessee.[10]

B. History of Federal RVP Requirements for the Denver Area

On November 6, 1991, we issued ozone nonattainment designations for the 1-hour ozone NAAQS (hereafter ''ozone NAAQS'' or ''ozone standard'') pursuant to section 107(d)(4)(A) of the CAA (56 FR 56694). In that action, we designated the Denver area as a nonattainment area [11] and classified it as a ''transitional area'' as determined under section 185A of the CAA.[12]

Because we designated the Denver area as a transitional ozone nonattainment area, the applicable volatility standard for the Denver area, under the Federal RVP rule promulgated on December 12, 1991, was 9.0 psi RVP in May and 7.8 psi from June 1 to September 15, beginning in 1992.[13] Since 1992, and in response to waiver petitions from the Governor of Colorado, we have waived the 7.8 psi RVP requirement for the Denver area and have required the less stringent 9.0 psi RVP. In-depth discussions of these past actions can be found in the applicable **Federal Register** notices.[14] Our decisions to grant these petitions were based on evidence that demonstrated the 7.8 psi standard was not necessary given the area's record of continued attainment of the 1-hour ozone standard using 9.0 psi RVP gasoline and evidence presented by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained.

On August 8, 1996, the Governor of Colorado submitted a maintenance plan and requested that we redesignate the Denver area to attainment for the ozone NAAQS.[15] We did not act on the Governor's request as the maintenance plan had both legal and technical problems that precluded our full approval.

In July, 1997, we established a new 8-hour ozone NAAQS of 0.08 parts per million (ppm).[16] At that time, we also promulgated regulations governing when the 1-hour ozone standard would no longer apply to areas. On June 5, 1998, we published a final rule (*see* 63 FR 31014) that revoked the 1-hour ozone standard for areas that were attaining the 1-hour standard; this

[1] Hawaii, Alaska and U.S. territories were excepted.

[2] 54 FR 11868 (Mar. 22, 1989).

[3] 55 FR 23658 (June 11, 1990).

[4] 56 FR 64704 (Dec. 12, 1991).

[5] See 55 FR 23658 (June 11, 1990).

[6] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[7] See 56 FR 24242 (May 29, 1991).

[8] See CAA section 211(h)(1) (allowing EPA to set a standard more stringent than 9.0 psi as necessary to achieve comparative emissions in nonattainment areas considering enforceability, the need of an area for emissions control and economic factors).

[9] 58 FR 46508 (Sept. 1, 1993).

[10] 59 FR 15625 (Apr. 4, 1994).

[11] The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

[12] Section 185A defines a transitional area as ''an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 [that] has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989.'' In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

[13] The standard applicable in other areas of Colorado is 9.0 psi from May 1 to September 15.

[14] See 53 FR 26067 (Apr. 30, 1993); 59 FR 15629 (Apr. 4, 1994); 61 FR 16391 (Apr. 15, 1996); 63 FR 31627 (June 10, 1998); and 66 FR 28808 (May 24, 2001).

[15] In order for EPA to redesignate an area to attainment under section 107(d)(3)(D) of the CAA, the Governor must submit a redesignation request and a maintenance plan that meets the requirements of section 107(d)(3)(E) and section 175A of the CAA, the redesignation requirement of the General Preamble for the Implementation of Title I of CAA Amendments of 1990 (57 FR 13498 (Apr. 16, 1991), and 57 FR 18070 (April 28, 1992)), and addresses the provisions of EPA redesignation policies and guidance documents. In general, the ozone maintenance plan must demonstrate long-term (i.e., 10 years) maintenance of the ozone NAAQS.

[16] 62 FR 38856 (July 18, 1997).

included the Denver area.[17] As a result of our finding that the 1-hour ozone standard was revoked and no longer applied to the Denver area, the State's August 8, 1996, 1-hour ozone redesignation request and maintenance plan became moot and neither the State nor EPA contemplated further action.

In 1998, the Governor of Colorado again requested that we waive the federal 7.8 psi RVP requirement for the Denver area. We found that while a 9.0 psi RVP standard was in place, the Denver area had shown continuous attainment of the 1-hour ozone standard since 1987 and had monitored attainment of the 8-hour standard since 1994. We concluded that retaining the 9.0 psi RVP standard would not cause the area's air quality to significantly deteriorate. *See* 63 FR 31627, (June 10, 1998). Moreover, we concluded that imposing a 7.8 psi standard would result in significant costs for consumers and refiners. We therefore extended the waiver relaxing the federal RVP standard for the area to 9.0 psi for the ozone control seasons of 1998 through 2000. We explained that designations under the new 8-hour ozone standard would be made by July 2000, and that our consideration of a permanent revision to the federal RVP standard for the area would be appropriate at that time.

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded, but did not vacate, the revised 8-hour ozone standard.[18] On February 27, 2001, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and remanded the decision to the Court of Appeals for further proceedings.[19] In the interim period, while the Supreme Court was considering the case, we reinstated the l-hour ozone standard in all areas of the nation to ensure the availability of a fully enforceable Federal ozone standard to protect public health.[20] With the reinstatement of the 1-hour ozone standard, the 1-hour standard designations and classifications that applied at the time the standard was revoked were also reinstated. We reinstated the 1-hour standard for the Denver area effective January 16, 2001, and returned the area to nonattainment for the 1-hour ozone standard with its prior ''transitional'' classification.

As a result of the reinstatement of the nonattainment designation, the Denver Regional Air Quality Council (RAQC) and the State developed a revised maintenance plan that updated the August 8, 1996, Governor's submittal and addressed our technical and legal concerns with the 1996 submittal. The Governor submitted a redesignation request and a proposed revised maintenance plan on November 30, 2000, in conjunction with a request for parallel processing. The Governor subsequently submitted the final redesignation request and maintenance plan on May 7, 2001.

The Governor's final submittal of the revised maintenance plan incorporated a gasoline RVP limit of 9.0 psi. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance plan's time period of 1993 through 2013 with the 9.0 psi limit, Colorado requested that the 9.0 psi summertime RVP standard (10.0 psi for ethanol blends) be made permanent for the Denver area upon our approval of the redesignation request and maintenance plan.

EPA's Region VIII approved the State's redesignation request and maintenance plan on September 11, 2001 (66 FR 47086) and it became effective October 11, 2001.[21] In that decision, Region VIII indicated that the change to assign a permanent RVP standard of 9.0 psi for the Denver area would be appropriate, but a separate rulemaking would be necessary to revise the federal RVP requirements for Colorado as specified in 40 CFR § 80.27(a)(2). That is the purpose of this direct final rule.

II. Justification for Granting Colorado's Request To Permanently Change the RVP Standard for the Denver Area

As previously mentioned, according to the preamble for the Phase II volatility controls,[22] the Governor of a State may petition us to set a volatility standard less stringent than 7.8 psi. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. The June 23, 2000, petition by the Governor of Colorado to extend the temporary exemption from the 7.8 psi RVP standard for the Denver area to the 2001 ozone control season (see 66 FR 28808, May 24, 2001) and available evidence indicate that imposing the 7.8 psi standard would result in costs to consumers and industry, and that these costs are not reasonable given that the 7.8 psi RVP standard is not necessary to ensure continued attainment of the 1-hour ozone standard.

Six refiners supply the Denver market and these refiners vary in size, refining capacity and complexity. The Colorado Petroleum Association (CPA) estimated that all of the refiners would have to spend capital dollars to upgrade and reconfigure their facilities to provide gasoline blended at the 7.8 psi RVP level for the Denver market. The CPA[23] estimated that upgrading equipment and reconfiguring facilities to provide 7.8 psi RVP gasoline to the Denver market would cost refiners approximately $15–25 million. Documentation submitted in support of Colorado's petition for relaxation of the 7.8 psi RVP standard for the 2001 ozone control season indicate that implementation of that standard would cost the consumer about 1.5 cents more per gallon of gasoline with an overall seasonal cost of $4,500,000.[24]

The record also supports the conclusion that retention of the 9.0 psi standard will not cause deterioration of air quality in the Denver area. As stated above, the area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. Further, the State has demonstrated that it has sufficient additional contingency measures, including a control on gasoline RVP, that can be implemented to bring the area back into attainment should the area exceed the 1-hour ozone NAAQS in the future. These State contingency measures are identified in Chapter 3, section F of the revised maintenance plan.

[17] Similar rulemakings for other areas were promulgated on July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911).

[18] *American Trucking Ass'n* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999).

[19] *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001).

[20] 65 FR 45182 (July 20, 2000).

[21] Documents related to EPA's approval of the Colorado redesignation request and maintenance plan are available for public inspection during normal business hours at: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the State documents relevant to that action are available for public inspection at: Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

[22] The Phase II final rulemaking discussed procedures by which States could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

[23] Memorandum from Stan Dempsey, Colorado Petroleum Association, Denver, CO, to Kerri Fiedler, EPA Region VIII, dated 2/07/2001.

[24] Memorandum from K.B. Livo, Colorado Department of Public Health and Environment, to Kerri Fiedler, Region VIII, dated 12/07/2000.

Based on the foregoing, we have decided to grant Colorado's's request to permanently change the federal volatility standard from 7.8 psi to 9.0 psi RVP for gasoline in the Denver/Boulder area during the ozone control season. The State has met the criteria outlined in our December 12, 1991 RVP rulemaking for relaxing the federal RVP regulations. The State has demonstrated that it has sufficient alternative programs to achieve attainment and maintenance of the ozone NAAQS and that the less stringent federal RVP standard is appropriate given the local economic impact that the more stringent 7.8 psi RVP requirement would cause.

III. Final Action

We are taking direct final action to approve Colorado's request to permanently relax the federal RVP standard applicable to summertime gasoline supplied to the Denver area. This action will change the applicable standard from 7.8 psi to 9.0 psi in 40 CFR 80.27(a)(2).[25] We view this as a noncontroversial action. Our final rule of September 11, 2001, fully approved the maintenance plan for the Denver area. It shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard. This maintenance plan went through public notice and comment during the approval process (see 66 FR 24075, May 11, 2001), and no adverse comments were received. Further, EPA has granted Colorado exemptions allowing the Denver area to receive gasoline containing up to 9.0 psi RVP since 1992, and this rule merely makes this currently applicable RVP limit permanent.

Because we view this as a noncontroversial amendment and anticipate no adverse comment, we are publishing this action without prior proposal. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the rule amendment should adverse comments be filed. This rule will be effective March 25, 2002 without further notice unless the Agency receives adverse comments by February 25, 2002.

If EPA receives such comments, we will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 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, 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 entitlement, 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any 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 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. Today's rule merely permanently continues the current temporary relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's rule, therefore, 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. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

D. 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, Apr. 23, 1997) applies to any rule that:

[25] Consistent with Colorado's request, this direct final action also automatically changes the effective federal RVP standard for summertime ethanol blends of gasoline supplied to the Denver area. Under 40 CFR 80.27(d), gasoline having a denatured anhydrous ethanol concentration of at least 9.0 percent but no more than 10.0 percent (by volume) is allowed to have an RVP that exceeds the applicable standard in 40 CFR 80.27(a) by one psi. Since this direct final action relaxes the RVP standard in 40 CFR 80.27(a) for Denver's summertime gasoline from 7.8 to 9.0 psi, the effective RVP standard for Denver's ethnol blends of summertime gasoline is relaxed from 8.8 to 10.0 psi.

(1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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 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 rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

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 OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

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(a).

H. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver area must comply. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's rule does not have tribal implications. It affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is

not a significant regulatory action under Executive Order 12866.

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * * * * * *					
Colorado [2]	9.0	9.0	9.0	9.0	9.0
* * * * * * *					

[1] Standards are expressed in pounds per square inch (psi).
[2] From 1992 through 2001, the RVP standard for the former Denver-Boulder nonattainment area was 7.8 psi, but waived to 9.0 psi.

* * * * *

[FR Doc. 02–1493 Filed 1–23–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7132–3]

RIN 2060–AJ69

Amendments to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: With this action, due to the receipt of adverse comments, EPA is withdrawing two of the amendments to the requirements on variability in the composition of additives certified under the gasoline deposit control program that were included in the direct final rule published on November 5, 2001 (66 FR 55885). We will address these comments in a subsequent final action based on the parallel proposal published on November 5, 2001 (66 FR 55905).

DATES: The following provisions of the direct final rule published at 66 FR 55885 (November 5, 2001) are withdrawn as of January 24, 2002.

(1) The revision to 40 CFR 80.162(a)(3)(i)(B), and

(2) The revision to 40 CFR 80.162(a)(3)(ii).

ADDRESSES: Comments and other materials supporting this rulemaking are contained in Public Docket No. A–2001–15, at: Air Docket Section, U.S. Environmental Protection Agency, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4227; Fax (734) 214–4816; e-mail *herzog.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2001, EPA published a direct final rule entitled ''Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program'' (66 FR 55885) and a parallel proposed rule (66 FR 55905). This rule was intended to make four revisions to EPA's gasoline deposit control program that were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309). These notices were published by EPA as a result of a settlement agreement to resolve the Chemical Manufacturer Association's (now the American Chemistry Council) petition for judicial review of specific provisions of the gasoline deposit control program. Because EPA received adverse comment on two specific amendments contained in the direct final rule, we are withdrawing the two amendments on which we received adverse comments. We stated in the direct final rule that if we received adverse comments on one or more distinct amendments, paragraphs, or sections of the direct final rule by January 4, 2001, we would publish a timely withdrawal in the **Federal Register** indicating which amendments, paragraphs, and sections would become effective and which amendments, paragraphs, or sections would be withdrawn. We received adverse comments on the following two amendments in that direct final rule: the revision to 40 CFR 80.162(a)(3)(i)(B), and the revision to 40 CFR 80.162(a)(3)(ii). We will address these comments in a subsequent final action based on the parallel proposal

published on November 5, 2001 (66 FR 55905). As stated in the parallel proposal, we will not institute a second comment period on this action. The following two amendments that did not receive adverse comment will become effective on February 4, 2002, as provided in the November 5, 2001, direct final rule: 40 CFR 80.162(d), and 40 CFR 80.169(c)(4)(i)(C)(*2*).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–1756 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC 96–45; FCC 01–376]

Implementation of Interim Filing Procedures for Filings of Requests for Review

AGENCY: Federal Communications Commission.

ACTION: Temporary procedural requirements.

SUMMARY: In this document, the Commission waives its procedures for filing requests for review from decisions of the Universal Service Administrative Company (Administrator) and petitions for reconsideration and applications for review that arise from such proceedings and establishes the following interim procedures. We extend the period for filing a request for review, or applications for review arising from such proceedings, from the current 30 day period to 60 days, provide applicants with the option of electronic filing (via either electronic mail or facsimile) for requests for review and petitions for reconsideration or applications for review that arise from such proceedings, and provide parties that have mailed such pleadings on or after September 12, 2001 with an opportunity to refile their pleadings electronically. These measures will help to ensure continued timely processing of such filings and to avoid prejudice to parties as a result of the recent disruptions in mail service.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, (202) 418–7369.

SUPPLEMENTARY INFORMATION: This Order, adopted December 20, 2001, and released December 26, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., S.W., Washington, DC 20554. The complete text is available through 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 at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication in the **Federal Register** and until further notice, we waive our filing procedures and establish the following procedures on an interim, emergency basis. First, requests for review filed pursuant to §§ 54.719 through 54.725, 47 CFR 54.719 through 54.725, and any applications for review arising from such proceedings shall be filed within 60 days of the issuance of the decision being reviewed. This 60-day period will be applicable to all such pleadings that were required to be filed on or after September 12, 2001 and were received by the Commission on or after September 12, 2001. Second, parties filing requests for review, or petitions for reconsideration or applications for review of decisions on requests for review, may, at their option, file their pleadings electronically, either by electronic mail or facsimile.

2. If filed by electronic mail, pleadings shall be filed at the following e-mail address: *CCBSecretary@fcc.gov.* Documents filed via electronic mail may be submitted in Adobe Portable Document Format (PDF), Word, WordPerfect, or any other widely used word processing format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address. Pleadings submitted by electronic mail will be considered filed on a business day if they are received at the Commission on that day at any time up to 12:00 a.m. Pleadings received after that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered filed on a business day if the complete transmission is received by any time up to 12:00 a.m.

3. We further provide that pleadings of the type described in paragraph 1 above that were due on or after September 12, 2001 and that were submitted by non-electronic means between September 12, 2001 and the effective date of this order may be refiled electronically within 30 days of the effective date of this order in accordance with the procedures specified in the preceding paragraph. Pleadings filed electronically pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed, and providing the date the pleading was originally mailed to the Commission, and by what means. For this purpose only, the original pleading will be considered filed as of the date that it was mailed.

4. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this order and WAIVES any contrary requirements.

5. *It is further ordered* that the waiver shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1601 Filed 1–23–02; 8:45 am]

BILLING CODE 6712–01–U

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, parts 52 to 99, revised as of October 1, 2001, § 52.244–6 is corrected by adding the introductory text of paragraph (a), and paragraph (c) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

* * * * *

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

* * * * *

[FR Doc. 02–55500 Filed 2–23–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005245-2012-02; I.D. 092401C]

RIN 0648-AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2002 Specifications

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

ACTION: Final 2002 specifications for the Atlantic herring fishery.

SUMMARY: NMFS issues final specifications for the 2002 Atlantic herring fishery. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries, and to comply with the provisions in the Fishery Management Plan for Atlantic Herring (FMP), which require annual specifications for the fishery. This rule also corrects and clarifies the final rule implementing the FMP by clarifying the vessel owners' or operators' reporting requirements.

DATES: The amendment to § 648.7 is effective January 24, 2002; the specifications are effective January 24, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, Final Regulatory Flexibility Analysis, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2000 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at http:/www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP appear at 50 CFR part 648, subpart K. The FMP requires the New England Fishery Management Council (Council), with the Atlantic States Marine Fisheries Commission (Commission), to develop and recommend the following specifications annually: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The Council and Commission also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. A proposed rule to implement the 2002 Atlantic herring specifications was published in the Federal Register on October 29, 2001 (66 FR 54498), with a comment period ending November 28, 2001. The process used to develop the specifications was thoroughly described in the preamble to the proposed rule and is not repeated here.

Final 2002 Specifications

Specifications for the 2002 fisheries are provided below. The only changes from the 2001 specifications are an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change are discussed in the proposed rule and the EA/RIR for the 2002 herring specifications.

TABLE. SPECIFICATIONS AND AREA TACS FOR THE 2002 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10.000
	(Area 2 & Area 3)
IWP	10,000
USAP	20,000
BT	4,000
TALFF	0
Reserve	0
TAC-Area 1A	60,000
TAC-Area 1B	10,000
TAC-Area 2	50,000
	TAC reserve: 80,000)
TAC-Area 3	50,000

This rule also implements a change to § 648.7(b)(1)(iii)(B) and adds § 648.7(b)(1)(iii)(C) to clarify the Council's intent concerning the reporting requirements for owners or operators of vessels who have been issued Atlantic herring permits but who are not required to have a Vessel Monitoring System (VMS) unit on board the vessel. This rule clarifies that only owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring on any one trip in a week must submit an Atlantic herring catch report via the Interactive Voice Response (IVR) reporting system by Tuesday of the following week. Even if the herring has not yet been landed, the operator must estimate the amount of herring on board the vessel and report that amount via the IVR system. As currently written, the regulations imply that this provision applies at all times to any owner or operator of a vessel issued a Federal permit for Atlantic herring who is not required to have a VMS unit on board the vessel. In addition, this rule clarifies that owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week. As currently written, the regulations require that the reporting provision also applies at all times to vessels catching herring in or from the EEZ. A review of the FMP and background material germane to the issue shows that this clarifying change is consistent with Council intent.

Changes from the Proposed Rule

While the amounts of the specifications remain the same as those found in the proposed rule, the restriction in the proposed rule on JVP to Area 2 only has been modified to retain the 2001 restriction of JVP to Areas 2 and 3. JVP remains prohibited in Areas 1A and 1B. This change to the proposed rule is a result of comments regarding the proposed restriction, and is based on a determination that, on balance, net benefits to fishing will be enhanced by continuing to allow JVP activity in both Areas 2 and 3.

Comments and Responses

Eight sets of public comments were received on the proposed rule from two vessel owners, a Maine fisheries association, the State of Connecticut, the Mid-Atlantic Fishery Management Council, the Russian Federation, a U.S. JVP partner, and a shoreside processor.

Comment 1: Two vessel owners and a Maine fisheries association opposed the elimination of JVP in Area 3 because they believe it would remove an opportunity for U.S. vessels to fish for herring at a time when fishing for other species is restricted or unavailable to them. The MAFMC, a representative of a canned sardine company, and the State of Connecticut specifically recommended that 10,000 mt of JVP should be made available in both Areas 2 and 3. The State of Connecticut believes that preventing JVP in Area 3 could leave fish unharvested in Area 3 because it is not certain that U.S. shoreside processors will fully utilize the Area 3 TAC.

Response: In 2001, 50,000 mt of TAC was allocated to Area 3. As of December 1, 2001, 28,700 mt, or 57 percent of the Area 3 TAC had been delivered to shoreside processors. While this figure represents a substantial increase in shoreside deliveries from 13,065 mt in 2000, it appears unlikely that shoreside processors will utilize the entire Area 3 TAC of 50,000 mt in 2002, as the Council believed. While the increase in shoreside deliveries reflects the addition of a new herring processing facility in Gloucester, MA, it is still uncertain that U.S. processing capacity is sufficient to utilize the full Area 3 TAC of 50,000 mt. NMFS agrees with the State of Connecticut that, while the export sector of the domestic industry has further developed over the past year, removing opportunities for U.S. vessels to participate in JVP operations in Area 3 would cause economic hardships of varying degrees to those vessels. Also, net benefits to the fishery will likely be enhanced by continuing to allow JVP activity in both areas. Therefore, this final rule allocates JVP to both Area 2 and Area 3.

Comment 2: The Russian Federation commented that all products processed at sea by Russian vessels are sent to foreign markets in accordance with U.S. law. The Federation believes that allocating JVP and TALFF to Russia provides additional advantages to U.S. fishermen -- in particular, new possibilities for more profitable operations and full utilization of fishing capacities -- and also promotes rational use of marine resources. A U.S. partner of foreign fishing operations supported this view.

Response: Based on an increase of estimated DAH/DAP by 5,000 mt for Atlantic herring over last year's estimate, the estimated portion of 2002 OY not harvested by U.S. vessels is zero, and, therefore, TALFF is zero. The Council has concluded that TALFF, even in relatively small amounts, can compete with U.S. exports in limited global markets. The potentially negative economic impacts of competition with TALFF-caught fish is discussed in the RIR. However, an allocation of zero TALFF does not preclude opportunities for U.S. vessels to participate in JVP operations. NMFS accepts the Council's analysis and rationale; this final rule sets TALFF at zero.

Comment 3: A Maine fisheries association and a U.S. JVP partner suggested increasing JVP to 20,000 mt for Atlantic herring.

Response: NMFS believes that a JVP specification of 20,000 mt could potentially impact the development of shoreside processors and would not be consistent with the FMP. If the majority of a 20,000 mt JVP allocation is taken from Area 3, this would allow only approximately 30,000 mt of herring to be delivered to shoreside processors. Since those processors have almost taken this amount in 2001, this would not leave additional allocation for further development of shoreside processing capabilities. However, NMFS will continue to closely monitor harvest from the various sectors of the fishery throughout the year, and if shoreside production falls short of expectations, NMFS, in consultation with the Council, could increase JVP allocation at any time during the fishing year, if warranted.

Comment 4: A U.S. JVP partner recommended a separate herring allocation for the Maine purse seine fleet.

Response: A separate allocation for Maine purse seiners was not within the scope of this action and would require an amendment or framework to the FMP. The commenter would have to convince the Council that such an action has enough merit to direct staff to develop a sufficient number of alternatives and supporting analyses, given the Council's current list of priorities.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes the annual and management area 2002 TACs for the Atlantic herring fishery, which are used for the purpose of closing the fishery when the quotas are reached.

Framework 1 to the FMP, as approved by the Secretary, is published elsewhere in today's Federal Register, effective immediately. That action gives NMFS the authority to divide the TAC for Management Area 1A into two seasons to preserve the much larger traditional fishery that has occurred from June through December. The fishing year begins on January 1, and the TAC for the January through May period is being set as a percentage of the annual quota allocation established by this rule, currently equating to only 6,000 mt for the 2002 fishing year. As such, unless this rule, which establishes the annual specifications for herring, is made effective prior to, or at the same time as, Framework 1, then there exists no basis upon which to determine the January through May TAC. Thus, the ability to implement Framework 1 is completely dependent upon the effectiveness of this action; without this rule in place, the basis upon which Framework 1 is predicated does not exist. Accordingly, the AA finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30 day delayed effectiveness for these specifications, since doing so is likely to prove necessary in order to close Area 1A.

Additionally, waiving the 30 day delayed effectiveness for these specifications will relieve a restriction on JVP operations (i.e., U.S. harvesters delivering to foreign processors) who are currently waiting to deliver herring. Some of the foreign vessels who received herring from domestic fishermen in 2001 intend to engage in herring JVP operations in 2002, and are currently waiting to do so. However, until the herring specifications are finalized and these foreign vessels are permitted, they are prohibited from doing so. Thus, a delay in the effectiveness of this action would prolong a restriction upon those vessels, while making these specifications immediately effective will serve to relieve the existing restriction. Therefore, there exists authority under 5

U.S.C. 553(d)(1) to waive the 30-day delayed effectiveness period for this rule.

NMFS prepared a final regulatory flexibility act analysis (FRFA) for this action. A copy of the FRFA, which incorporates the IRFA, is available from the Council (see **ADDRESSES**). A summary of the FRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the preamble to the proposed rule and are not repeated here. This action does not contain new reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Eight sets of public comments were received on the proposed rule. None of the comments directly addressed the results of the IRFA. However, comments 1 through 3 addressed economic impacts to vessels and shoreside processors. Responses to those comments are provided in the preamble of this final rule.

Number of Small Entities

All of the affected businesses (fishing vessels and dealers) are considered small entities. The last full year of data available for the herring fishery is the year 2000. There were 169 vessels, 6 processors, and 104 dealers participating in the fishery in 2000.

Minimizing Economic Impacts on Small Entities

The only change from the 2001 specifications is an increase in estimated DAH/DAP by 5,000 mt and a resulting decrease in TALFF to zero. The impacts of this change in DAP could benefit domestic processors because domestic shoreside processing has increased recently. The impacts were discussed in the proposed rule published on October 29, 2001 (66 FR 54498) and in the EA/RIR/IRFA for the 2002 herring specifications. The Regulatory Flexibility Act requires an agency to consider alternative measures that would mitigate adverse economic impacts to small businesses. While this action would eliminate TALFF fees to the Nation and decrease the profitability of foreign fishing vessels that previously participated in JVP/TALFF operations, it would not have an adverse economic impact on U.S. herring processors or other U.S. small businesses as compared to the status quo, which allocates 5,000 mt of TALFF and would have a negative impact on U.S. processors who are attempting to penetrate emerging markets for herring. The Council also considered a specification of 20,000 mt of TALFF and concluded that this level of TALFF would also cause significant negative impacts on U.S. processors by competing directly with the U.S. export market for herring. NMFS did not adopt the recommendation of the Council to limit JVP to Area 2, because it is likely there would be significant negative economic impacts to several vessels in 2002 that participated in Area 3 JVPs in 2001. However, NMFS did not adopt Council non-preferred alternatives that would have increased JVP up to 50,000 mt because amounts over the 10,000 mt preferred specification of JVP could limit the supply of herring going to U.S processors while providing foreign nations with additional amounts of herring to sell into emerging markets in direct competition with U.S. exports.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a permit holder letter that also serves as a small entity compliance guide was prepared. The guide (i.e., permit holder letter) will be sent to all holders of permits issued for the Atlantic herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and are also available at the following web site http://www.nero.nmfs/gov/ro/doc/nero.html.

This action clarifies a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0212. Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.7, paragraph (b)(1)(iii)(B) is revised, paragraph (b)(1)(iii)(C) is redesignated as paragraph (b)(1)(iii)(D), and a new paragraph (b)(1)(iii)(C) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

* * * * *

[FR Doc. 02–1761 Filed 1–18–02; 3:41 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011221308-1308-01; I.D. 112101A]

RIN 0648-AP44

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 1

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures contained in Framework Adjustment 1 to the Atlantic Herring Fishery Management Plan (FMP). This final rule modifies the annual specification of herring quota for Management Area 1A by establishing two quota periods. The intent of this final rule is to cap the landings of herring from Area 1A during the winter/spring (January through May) season so that more annual quota will be available to vessels fishing during the summer/fall (June through December) peak demand season.

DATES: Effective January 24, 2002.

ADDRESSES: Copies of Framework Adjustment 1 to the Atlantic Herring FMP, including the Environmental Assessment (EA), and Regulatory Impact Review (RIR) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at http://www.nero.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281-9103, fax (978) 281-9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: This final rule implements the measures contained in Framework 1 to the FMP. These measures require annual specification of herring quotas for two seasonal fishing periods for Management Area 1A (January - May and June - December). The annual quota (TAC) for each period will be established each year through the existing annual specifications' process outlined in 50 CFR 648.200. The annual Atlantic herring specifications for fishing year 2002 are published elsewhere in this edition of the Federal Register. This final rule also modifies the 2002 Area 1A TAC of 60,000 mt by allocating 6,000 mt to the January - May period, leaving 54,000 mt for the June - December period. The annual 2002 TAC for Area 1A would remain unchanged. The intent of this final rule is to modify the 2002 Area 1A TAC upon implementation of the 2002 specifications. Complementary action is being proposed for implementation by the states through the Atlantic States Marine Fisheries Commission's Atlantic Sea Herring Interstate FMP (IFMP).

Prior to this modification, the FMP required NMFS to close the directed herring fishery in a management area when 95 percent of the TAC for that area is harvested. Management area TACs were established by the states under the IFMP for the 2000 fishing year, and by NMFS under the FMP for the 2001 fishing year (66 FR 28846). Therefore, 2000 was the first year landings from Area 1A were constrained by the TAC. The traditional peak demand for herring coming from Area 1A occurs during June - November, when the primary use is for lobster bait. In both 2000 and 2001, the TAC was attained prior to the end of November (October 27, 2000 under the ASMFC Plan; November 10, 2001 under the Atlantic Herring FMP (66 FR 56041), respectively).

Over the past year, the New England Fishery Management Council (Council) and its Herring Oversight Committee discussed at several meetings the various proposed alternatives to address the industry's concerns, including limited entry or controlled access in Area 1A. Causes of the early attainment of the TAC in Area 1A, include excessive harvesting capacity of the herring fleet given Area 1A TAC levels specified in recent years, and the lower cost for vessels from Maine, New Hampshire, and Massachusetts to harvest herring from Area 1A compared to other areas located farther offshore. These vessels are induced to concentrate their effort in Area 1A in order to maximize profits, provided the fish are available in sufficient quantities. As a result, the herring TAC is reached earlier than desired by the fleet as a whole. For several years, the Council has considered developing an amendment to the FMP to establish a limited entry or controlled access program to address the capacity issue. However, other fishery issues have been identified as having higher priority, at least through 2002. Therefore, the Council developed Framework 1 to address the problem for the near future.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR 648.206. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, where comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analysis and provide an opportunity to comment on them, specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to NMFS that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary. For this action, the Council recommended, and NMFS concurred after review of current circumstances in this fishery as further explained in the classification section of the final rule, that the measures be published as a final rule.

The initial and final meetings for Framework 1 at which public comment was received were on July 24-26, 2001, and September 25-27, 2001, respectively. The Council's Herring Oversight Committee and Herring Advisory Panel also met in August, between the two Council meetings, to take public comments and to discuss the action under consideration. Documents summarizing the Council's proposals and the analysis of biological, economic and social impacts were available for public review one week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to and during the final meeting. The Council received no written comments on the proposed action.

Classification

The fishing year for the Atlantic herring fishery begins on January 1, and the TAC for the January - May period is being set at only 6,000 mt for the 2002 fishing year in this final rule. Because herring are currently plentiful in Area 1A and landings data from the fishery indicate that significant catches are being made, the TAC may be reached within a few weeks. Without this rule in place, NMFS would have no authority to close the directed herring fishery once 95 percent of the seasonal TAC is attained. Furthermore, NMFS needs some lead time before a closure is effected in order to notify industry of the closure. Therefore, it is essential that this action be implemented as quickly

as possible in order to avoid exceeding the TAC for the first quota period, which would defeat the purpose of the action, as described in the preamble to this final rule. Therefore, the Assistant Administrator for NOAA (AA) finds that the July 24-26, 2001, and the September 25-27, 2001, Council meetings provided adequate prior notice and opportunity for public comment and, because any further delay could result in the seasonal TAC for the first quota period being exceeded, further notice and opportunity for public comment are impracticable. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive additional opportunity for prior public comment.

The AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this final rule. The TAC for the 2002 fishery for Management Area 1A implemented in the 2002 Atlantic Herring specifications (published elsewhere in this edition of the Federal Register) is 60,000 mt. This action modifies the annual specification for Management Area 1A by establishing two quota periods so that more annual quota will be available to vessels fishing during the summer/fall peak demand season. Because this action caps the landings of herring from Area 1A during the January - May season, state agencies and fishers must be notified of the new cap in order to plan accordingly. In order for industry to plan accordingly for the upcoming fishing year, this modification of the annual specifications for the herring fishery must be published on or about January 1. Further, as explained in the preceding paragraphs, the availability of herring in Area 1A in January 2002 and preliminary landings information from the industry indicate that the directed fishery in Area 1A may need to be closed within a few weeks. Without this final rule's measures in place, the authority to close the fishery at 95 percent of the 6000 mt TAC in Area 1A would not exist, and the expected benefits of this action would be lost in 2002. As such, it is contrary to the public interest and impracticable to delay effectiveness for 30 days.

Because a prior notice and opportunity for public comment is not required for this final rule under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This final rule has been determined not to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: January 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.200, the first two sentences of paragraph (a) are revised to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least annually, but no later than July, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.202(f). * * *

* * * * *

3. In § 648.202, the first sentence of paragraphs (a) is revised, and paragraph (f) is added to read as follows:

§ 648.202 Total allowable catch (TAC) controls

(a) If NMFS determines that catch will reach or exceed 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit a vessel, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. * * *

* * * * *

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A shall be set through the annual specification process described in § 648.200.

[FR Doc. 02–1762 Filed 1–18–02; 3:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011702A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District (Statistical Area (area) 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2002 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to prevent exceeding the A season HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2002 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., September 1, 2002. The first directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t., January 23, 2002, until 1200 hrs, A.l.t., January 28, 2002. The second directed fisheries in the HLA in area 542 and area 543 are open as follows: Effective 1200 hrs, A.l.t.,

January 30, 2002, until 1200 hrs, A.l.t., February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of Atka mackerel TAC for non-jig gear in the Eastern Aleutian District and the Bering Sea subarea is 2,518 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). See § 679.20 (a)(8)(ii).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of TAC for non-jig gear Atka mackerel in the Eastern Aleutian District (Area 541) and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,918 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

In accordance with § 679.20 (a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543. The opening is to occur 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has establish the opening date for the second HLA directed fisheries as 48 hours after the closure of the first HLA fisheries in both 542 and 543. Consequently, NMFS is opening directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the **DATES** section of this publication.

In accordance with § 679.20 (a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the platoon or platoons associated with the directed fishery or fisheries for which they have been registered. NMFS has notified the operator of each vessel as to which platoon each vessel has been assigned by NMFS. (See the notification appearing in this publication of the **Federal Register**.)

In accordance with § 679.20 (a)(8)(ii)(C)(1), the A season harvest limit of the seasonal TAC in areas 542 and 543 are 6,605 mt and 5,467 mt respectively. Based on those seasonal apportionments and the proportion of the number of vessels in each platoon compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543 during the A season, the harvest limit for each HLA directed fisheries for areas 542 and 543 are as follows: For the first directed fishery in area 542: 3,302 mt; for the first directed fishery in area 543: 2,733 mt; for the second directed fishery in area 542: 3,302 mt; for the second directed fishery in area 543: 2,733 mt. In accordance with § 679.20 (a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the platoons participating in the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this action.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season allowance of the 2002 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and to prevent exceeding the A season HLA limit of the 2002 TAC of Atka mackerel allocated to the Central and Western Aleutian Districts constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season allowance of the 2002 TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea and to prevent exceeding the A season Atka mackerel HLA harvest limits established for the Central (area 542) and Western (area 543) Aleutian Districts constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1759 Filed 1–18–02; 3:05 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011702B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Platoons in Areas 542 and 543

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

ACTION: Notification

SUMMARY: NMFS is notifying operators of registered vessels of their platoon assignments for the Atka mackerel fishery in harvest limit areas (HLA) in Statistical Area (area) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the A season HLA limits established for area 542 and area 543 pursuant to the 2002 Atka mackerel total allowable catch and associated Steller sea lion protection measures.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 18, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the emergency rule implementing 2002 harvest specifications and Steller sea lion protection measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002), NMFS established HLAs for Atka mackerel directed fishing in areas 542 and 543. Operators of vessels had until January 15, 2002, to register to fish in the HLA in area 542 and/or 543. NMFS is required to randomly assign vessels between these areas to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time.

In accordance with § 679.20(a)(8)(iii)(A), operators of eight vessels using trawl gear for directed fishing for Atka mackerel have registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B) the Administrator, Alaska Region has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which the vessel operators have registered and is now notifying each vessel operator of the assignment.

Vessels assigned to Platoon A that will participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery for area 543 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: Federal Fishery Permit number (FFP) 2733 Seafreeze Alaska; FFP 4093 Alaska Victory; FFP 3835 Seafisher; and FFP 3819 Alaska Spirit.

Vessels assigned to Platoon B that will participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery for 542 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: FFP 2443 Alaska Juris; FFP 3400 Alaska Ranger; FFP 2134 Ocean Peace; and FFP 3423 Alaska Warrior.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action that notifies each vessel of their platoon assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion that notifies each vessel of their platoon assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 2002.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–1760 Filed 1–18–02; 3:05 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 16
Thursday, January 24, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of the American Water Heater Company's Energy Saver Control From the DOE Water Heater Test Procedure, Denial of the Application for an Interim Waiver, and Request for Comments on Testing Water Heater Performance With Electronic Controls (Case No. WH–010)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Solicitation of comments.

SUMMARY: This document publishes a Petition for Waiver to the Department of Energy (DOE or Department) water heater test procedure from the American Water Heater Company (American) regarding an adaptive thermostat control. American's Petition for Waiver requests that DOE lower the average tank temperature and base the water draws on equal energy content compared to the existing test procedure. This document also denies an Interim Waiver to American from the existing DOE water heater test procedure. The Department solicits comments, data, and information as to whether to grant the Petition for Waiver as well as comments on testing water heaters with electronic controls.

DATES: DOE will accept comments, data, and information not later than February 25, 2002 on American's Petition for Waiver and comments on testing water heaters with electronic controls.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Building Research and Standards, Case No. WH–010, Mail Stop EE–41, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127. We welcome electronic comments but they must be followed by a signed letter. Send email comments to terry.logee@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1689, email: Terry.Logee@ee.doe.gov or Ms. Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters.

The DOE test procedure, ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' prescribes a method for characterizing the energy requirements of all types of water heaters and yields model-specific energy efficiency information that can aid consumers in their purchasing decisions. The test procedure is set forth in Title 10 CFR part 430, Subpart B, Appendix E.

The Department amended the test procedure rules on September 26, 1980, to provide for a waiver process by adding Section 430.27 to Title 10 CFR part 430. 45 FR 64108. The waiver process allows the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to temporarily waive test procedures for a particular basic model. On November 26, 1986, DOE amended the waiver process to allow the Assistant Secretary to grant an Interim Waiver for immediate relief from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823. The amendment is codified at 10 CFR 430.27(a)(2).

Any person may submit a petition to waive the requirements of the applicable test procedure based on a claim that a basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate a basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. The Department publishes the Petition for Waiver in the **Federal Register** and requests comments from interested parties during a 30-day comment period. The Department analyzes the petition, including all comments, and publishes a notice of each waiver granted or denied in the **Federal Register**. Prior to a decision, the Assistant Secretary will consult with the Federal Trade Commission pursuant to 10 CFR 430.27(l). Waivers generally remain in effect until future test procedure amendments become effective; resolving the problem that is the subject of the waiver.

Any interested person who has submitted a Petition for Waiver may also file an Application for Interim Waiver to the applicable test procedure requirements. The Application may be filed jointly with, or subsequent to, the filing of a Petition for Waiver.

Each Application for Interim Waiver must identify the basic models for which the interim waiver is requested, demonstrate that it meets the criteria in 10 CFR 430.27, and be signed by the applicant or by an authorized representative. In addition, each applicant for an Interim Waiver must notify all known manufacturers of domestically marketed units of the same product type of its filing and provide copies of both the Application for Interim Waiver and the Petition for Waiver to these manufacturers. These manufacturers may send comments to DOE regarding the Petition for an Interim Waiver. An application for an Interim Waiver does not allow the manufacturer to disregard DOE's test procedure requirements until an Interim Waiver has been granted.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27 (g). An Interim Waiver remains in effect for a

period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Summary of Petition

On April 26, 2001, American Water Heater Company filed an Application for Interim Waiver and a Petition for Waiver, Case No. WH–010, concerning the tank temperature of water heaters during testing of water heaters with adaptive electronic controls. There was no confidential material deleted from American's petition. However, American submitted test data at DOE's request which was originally marked confidential. Thereafter, on December 13, 2001, American withdrew its designation of confidentiality for this test data (Letter dated December 13, 2001, from Alex Kovalenko, Manager of Product Development Engineering, American Water Heater Company to Terry Logee, U.S. Department of Energy). The test data is in the docket file. A copy of American's Petition for Waiver and Application for Interim Waiver is appended to this notice.

Whereas the typical electric water heater control has a fixed temperature thermostat setpoint, American's electronic controller can automatically adjust the thermostat setpoint up or down according to actual household water usage patterns. This automatic thermostat adjustment is called an ''Energy Saver Cycle.'' American does not identify any upper or lower thermostat setpoints in its proposal.

American's application seeks the following changes to DOE's test procedure for a controller with an ''Energy Saver Cycle'': (1) Add a qualification test; (2) Decrease the temperature of the thermostat to the lowest stable temperature; (3) Adjust the amount of water withdrawn from the tank during the simulated-use test; and (4) Modify the equations used to compute the energy factor. The current DOE test procedure requires a constant tank temperature of 135 °F and does not permit a variable thermostat setpoint. The test procedure does not have a controller qualification test. DOE's current test procedure also requires a first hour rating test to determine the amount of hot water that can be withdrawn from a tank of water heated to 135 °F.

American's first proposed change for a qualification test for the ''Energy Saver Cycle'' would prove that the controller could automatically adjust the thermostat setpoint. In its proposal, American prescribes a large number of water draws to allow the tank thermostat to reach a minimum setpoint and then to return to 135 °F. The petition calls this control process an ''Energy Saver Cycle'' if the controller reaches an equilibrium temperature lower than 135 °F when the water heater is subjected to the following water usage pattern, herein called draws. Each draw would end when the lower element energizes, and the subsequent draw would commence when the thermostat turns off the power to the lower element. The test would initially start with the tank at 135 °F. The petition states that the sequence will continue until the mean tank temperature reaches 125°F or less. This test shows that the control will lower the set point in response to small water draws. If this sequence is continued, the lowest ''stable'' temperature can be determined. The petition defines the lowest stable temperature as the point at which water draws of 10.7 gallons will not cause the controller to increase the thermostat setpoint.

To test whether the controller will also automatically raise the temperature, water draws large enough to energize the upper element must be made until the controller has returned to the mean tank temperature of 135 °F. These tests demonstrate that the controller adjusts the set point up and down based on actual water usage. Since the ''adjusting'' process could take approximately 100 cycles for the American control logic, the petition seeks to run this test only once for each model of controller; once the controller has been qualified, any water heaters using that controller would qualify to use the ''Energy Saver Cycle'' test procedure.

American's second proposed change would lower the water heater thermostat set point to the lowest stable temperature. This temperature would be obtained through knowledge of the temperature adjustment logic for the ''Energy Saver Cycle''. This lowest stable temperature must be maintained during the six draws of 10.7 gallons or the test is invalid. In this case, the test would need to be repeated at a higher stable temperature.

American's third proposed change is to modify the amount of water drawn in each of the six draws to match the energy contained in each draw of the current procedure. This accounts for the fact that the temperature of the water delivered from the water heater in American's proposal will be lower than that delivered in the current DOE test procedure. Each draw is approximately 10.7 gallons of water and the energy required to raise 10.7 gallons of water from its inlet temperature of 58 °F to 135 °F is 6836 BTU. For the Energy Saver Cycle, the draw would be terminated when 6836 BTU have been removed.

American's fourth proposed change is to modify several calculations in the current test procedure. The calculations in the current DOE test procedure reference a nominal tank temperature of 135 °F and a nominal outlet temperature of 135 °F. The petition for waiver seeks to modify Section 6.1.6, the calculation of the adjusted daily water heating energy consumption from:

$$Q_{da} = Q_D - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - \left(135^\circ\ F - 67.5^\circ\ F\right)\right] UA\tau_{stby,2}$$

to:

$$Q_{da} = Q_D - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - \left(T_{su} - 67.5^\circ\ F\right)\right] UA\tau_{stby,2},$$

where T_{su} is the maximum tank temperature observed after the sixth draw of the simulated-use test.

The petition seeks to change the calculation of $Q_{hw,77}$ in Section 6.1.6 from:

$$Q_{hw,77} = \sum_{i=1}^{6} \frac{M_i C_{p,i} (135^\circ\ F - 58^\circ\ F)}{\eta_r}$$

to:

$$Q_{hw,77} = \sum_{i=1}^{6} \frac{M_i C_{p,i} (T_{su} - 58^\circ\ F)}{\eta_r}$$

The last calculation that the petition for waiver seeks to modify is that of the energy factor in Section 6.1.7. The proposed modification would change the equation from:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p,i} (135^\circ\ F - 58^\circ\ F)}{Q_{dm}}$$

to:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p,i} (T_{su} - 58^\circ\ F)}{Q_{dm}}$$

Discussion of American's Petition for Waiver

The Department's waiver regulations provide that the applicant for Interim Waiver is required to notify in writing all known manufacturers of domestically marketed units of the same product type that it has filed an Application for Interim Waiver and a Petition for Waiver and provide copies of these documents to the manufacturers. The regulations also provide that the Assistant Secretary will receive and consider timely written comments on the Application for Interim Waiver. 10 CFR 430.27(c)(2).

The Department received comments from Rheem and Applied Energy Technology (AET). Rheem has indicated DOE should recognize new control technologies for water heaters and should pursue changes to credit resulting energy savings. Rheem is concerned, however, that American's proposed method is designed specifically for one type of control system and disqualifies or discounts other well-known alternative control schemes.

Rheem expressed a concern that the proposed procedure assumes the best-case scenario for the test condition. Rheem indicates that potential savings would only be realized if the ''Energy Saver Cycle'' were selected and if a homeowner's water use patterns resulted in a water heater setpoint temperature below 135 °F. Rheem is concerned the proposed procedure would lead to manufacturers claiming water heater efficiencies not representative of those achieved in practice.

Rheem also believes that the first hour rating would need to be adjusted if the tank temperature is lowered. Rheem states that the revised tank temperature, i.e., the lowest stable temperature, should be used for the first-hour rating test.

AET commented that a comprehensive reexamination of the DOE water heater test procedure is needed to allow proper representation of in-field efficiency improvements made possible by a variety of control approaches. While AET indicates that the proposed test method is an improvement over the current test procedure, AET claims that the proposed test method excludes other forms of controls that could be applied to water heaters and therefore would provide a competitive advantage to American.

AET is concerned that because a lowest stable temperature is not specified in the proposed test procedure, the delivered water temperature could consequently be extremely low. AET also commented that the proposed test procedure's absence of a lower and upper setpoint temperature could be abused. A manufacturer could use a large on-off temperature differential on the upper thermostat so that the upper heating element would not energize. This could allow a lowest stable temperature of about 59 °F, resulting in nearly 100 percent efficiency.

AET's final point echoes the concern of Rheem that the proposed test procedure would yield a best-case scenario and would not necessarily reflect the energy use patterns that are typical of consumers. AET claims that the proposed test procedure does not use long draws, like those seen in actual use that would force the controller to reach a stable temperature different from the lowest stable temperature.

In response to these comments, the Department notes that a waiver is issued for specific basic models and that American has identified those models it is seeking to waive in its petition for waiver. Other basic models or other control schemes would have a different waiver and test procedure. The comments by Rheem and AET on the general test procedure are of use because they have identified issues related to the methodology of how to arrive at a test temperature representative of actual consumer use and how to measure the first hour rating. These issues would need to be discussed and resolved before a waiver could be issued regarding testing of water heaters with electronic controls.

Discussion of American's Application for Interim Waiver

Pursuant to the requirements in 10 CFR 430.27(g), an Interim Waiver will be granted if the applicant can show that it will experience economic hardship if the application for Interim Waiver is denied, if the petition for waiver will likely be granted and/or if the Assistant Secretary determines for public policy reasons to grant immediate relief pending a determination on the petition for waiver. DOE will address each of these criteria separately as applied to American's petition for an interim waiver.

First, DOE does not believe American has provided information in its application for the interim waiver to support its claim of economic hardship. In its application, American merely stated, ''From an economic point of view, American Water Heater Company has invested significantly in the development of this product and to not be able to present one of its best features would cause loss of sales and discourage further development.'' (Letter dated April 26, 2001 from Timothy J. Schellenberger, Senior Vice President—Product Engineering, to the Assistant Secretary, Application for Interim Waiver). American's mere assertion of economic hardship does not establish that it will experience such hardship. American did not provide any factual information to justify its assertion.

Second, at this time, the Assistant Secretary does not have adequate information from American to determine that American's Petition for Waiver from the DOE test procedure will likely be granted. The petition is incomplete for the following reasons:

American's proposed test protocol depends on establishing a lowest stable temperature for their thermostat controller. The procedure outlined in the petition uses a 100 draw-cycle to qualify the controller as having an & ldquo;Energy Saver Cycle''. However, this procedure only establishes that the controller will lower and raise the thermostat setpoint. American did not provide any test data that DOE could use to determine that a lower thermostat setpoint would result from typical household use and what that lower thermostat setpoint might be. For the petition for waiver to be complete, it must contain the test temperature for each basic model for which a waiver is requested. From the confidential test

data that was provided, DOE can only determine that the controller can automatically reduce or raise the thermostat setpoint.

DOE believes that American must provide data from field tests of water heaters using this controller to determine an average lowest stable temperature for the U.S. for each basic model for which a waiver is requested. There are probably a number of variables that should be considered so that the resultant lowest stable temperature is representative of U.S. households including tank volumes, various inlet water temperatures and varying family sizes. The appropriate test time and the allowed variability to demonstrate a ''stable'' temperature would have to be determined. Furthermore, the field tests should contain a sample large enough to be statistically relevant at high confidence. The Department would like to receive comments on the concerns listed above.

DOE recognizes that developing the necessary data to quantify the lowest stable temperature for each basic model could be a time consuming and costly task. Since this petition for waiver from the DOE test procedure for an automatic thermostat controller is the first DOE has received for this type of device, we are very interested in receiving comments that would help develop a general test method for automatic thermostat controllers. For instance, is it practical to develop a computer model that could be used to qualify any automatic controller? Is it possible to use existing databases such as the Energy Information Administration's Residential Energy Consumption Survey for housing and family characteristics combined with average inlet water temperature data from ground water temperatures to develop an algorithm that would yield a reasonable lowest stable temperature? Are there other ways to simplify and generalize the test procedure for an automatic thermostat controller?

Second, American's petition for waiver does not address the first hour rating of the water heater. This test result is used by retailers and installers as an indication of what size water heater to install in a given home. The FTC also uses this value to determine which group of water heaters a given model belongs in for establishing the range of energy factors and yearly costs of operation. In the current DOE test procedure, the first hour rating test starts at a maximum temperature of 135 °oF ±5 °F and continues until the average tank temperature has dropped 25 °F. If the water is reheated within the hour, the draw is initiated again and the water withdrawn is summed. American's proposed modification to the current 24-hour simulated-use test did not provide a first hour rating test which is a necessary component of the water heater test procedure. DOE believes it would be logical for the first hour rating test to be conducted at the same tank temperature as the test for determining the energy factor. However, if that temperature is much lower than the current 135 °F ±5 °F, the final water temperature could be too cool to be considered useful.

Finally, the Department has determined that there are no public policy impacts that warrant granting immediate relief pending a determination on the Petition for Waiver.

Conclusions

Following a careful consideration of all material that was submitted by American and based on the criteria for granting an interim waiver as provided in 10 CFR 430.27(g), and for the reasons stated above, the Department has concluded that American's Application for an Interim Waiver should be denied.

At the same time, the Department solicits comments, data, and information as to whether to grant the Petition for Waiver, as well as comments on testing water heaters with electronic controls. Such comments will assist the Department in determining whether it can develop a practical test procedure for these devices.

Issued in Washington, DC, on January 17, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

April 26, 2001

Assistant Secretary for Conservation and Renewable Energy

United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585

To Whom It May Concern: Subject: Petition for Waiver

Specific Requirements to be Waived.

American Water Heater Company seeks a waiver in the application of the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' contained in 10 CFR Part 430 Subpart B Appendix E as applied to electric water heater models that have adaptive electronic controls.

Utilizing a microprocessor-based control on an electric water heater allows a level of intelligence to be added to the control logic that is not possible with the conventional electro-mechanical control systems used today. One use of this intelligence is to have the control adjust the stored water temperature based on the actual hot water usage pattern to determine the lowest possible temperature to store water that will meet the needs of the consumer. The result of this new control logic is a reduction in energy consumption. Such a control cycle will be identified as an ''Energy Saver Cycle''.

American Water Heater plans to commercialize a microprocessor-based control system with an Energy Saver Cycle. However, we are unable to characterize and market the true efficiency benefit to the consumer through the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' ratings process. The test procedure does not allow the efficiency benefit of an Energy Saver Cycle to be demonstrated. These types of intelligent electronic controls are more expensive and without the ability to demonstrate the benefits in terms of energy savings, it is difficult to justify the additional cost to the consumer. We are specifically petitioning to allow the use of an alternate test procedure described below to rate and label the efficiency of a water heater when using the ''Energy Saver Cycle''.

Basic Models and all Manufacturers

(See attached list)

Design Characteristics

Background Information

The predominate energy loss of a tank type electric water heater is the standby loss associated with storing the hot water. There are two methods of reducing these losses; one can increase the effectiveness of the insulation system, or reduce the stored water temperature. The ''Energy Saver Cycle'' saves energy by reducing the stored water temperature.

The study report ''Baseline Results and Methodology of the Consumer Subgroup Analysis for Residential Water Efficiency Standards'', submitted to the Department of Energy October 1998, shows that the average set point temperature of residential water heaters varies widely across the United States. The northern states tend to be hotter with average set points as high as 142 °F and the south as low as 123 °F. This corresponds inversely with the average inlet water temperature in the same areas. At the time of use, the hot water is blended with cold water to produce the desired use temperature. This process of blending causes the usage quantity of hot water to change inversely with the stored water temperature. For example: A shower

lasting 10 minutes with a delivered water temperature of 105 °F and a flow rate of 2.5 gallons/minute uses 25 gallons of water. If 135 °F hot water, supplied by a water heater, is blended with cold water at 58 °F, the shower will consume 9.74 gallons of cold water and 15.26 gallons of hot water. In contrast, if the hot water supply temperature were reduced to 115 °F the usage proportions would change to 4.39 gallons of cold water and 20.61 gallons of hot water. The energy consumed and the quantity of water used in the shower is the same in both cases but the proportion of heated water goes up. The important difference is that, in the time between showers, the energy consumed to maintain the stored water temperature goes down by 29.85% when the water is stored at 115 °F versus 135 °F. The person taking the shower didn't know the difference except they had to use more hot water to get the desired temperature. As the stored water temperature is further lowered, eventually the water heater will not be able to supply the needed amount of blended hot water and the water temperature will have to be increased.

The adaptive control logic continually adjusts stored water temperature within specified limits to get to the temperature where the maximum demand event can be met by the quantity and temperature of water stored in the heater. This ''Energy Saver Cycle'' will produce real energy savings in a significant number of households and thus deserves to have a test procedure designed to allow the efficiency benefits to be demonstrated. The current test procedure doesn't allow this because the mean tank test temperature is fixed at 135 °F.

Energy Saver Cycle Qualification test

It is simple for a manufacturer to put an electronic control on a water heater and label a cycle as an ''Energy Saver Cycle'' without having an adaptive control that will adjust stored water temperature based on usage. Some examples of other controls that would not qualify for this modified test procedure could be, a conventional control with a fixed but lower set point which is identified as an ''Energy Saver Cycle'' or an off peak type control that simply adjusts the set point based on the time of the day. This new test is required to prove that the control meets the ''Energy Saver Cycle'' criteria as a qualifier to use the energy saver test modifications. The object of the Page 3 test is to confirm that the control does adapt the stored water temperature based on water usage.

The following simple test would be used to prove that the control adapts water temperature to water usage.

1. The unit is set up per the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'', 10 CFR 430.23.

2. The unit is run on normal cycle and the thermostat is adjusted until the mean tank temperature is 135 °F. Then the control is switched to the ''Energy Saver Cycle'' and a series of small draws are made. Each draw should be sufficient to cause the lower element to come on. The lower element will reheat the water until it shuts off at which time another draw will start. This sequence will continue until the mean tank temperature, at the element shutoff point, is 125 °F or less. The mean tank temperature after the first cycle should be 135 °F and the last cycle will be 125 °F or less to show that the control will lower the set point in response to a low water usage situation.

3. Then the draw size will be changed to be large enough that the control will adjust the temperature up. After each reheat the draw will be repeated until the control has adjusted the set point up enough to return the mean tank temperature back to the 135 °F point. At this point, the test would have proven that the control adjusts set point up and down based on actual water usage. If the control can not demonstrate the adaptive ability to adjust stored water temperature based on actual usage, it will not qualify to use the proposed modified procedure.

4. This test is somewhat cumbersome in that a large number of draw reheat cycles would be required to complete the test. In our case, it would require approximately 100 cycles. The test could be automated and allowed to run over night to speed up the qualification process. The test should only have to be run once for a given manufacturer's control. Once the control has been qualified, any units using that control would qualify for the Energy Saver Cycle test sequence.

Test Procedure Changes

Staying with the principal that the delivered hot water energy doesn't change as the stored water temperature changes, the following changes are required to allow the energy savings of an ''Energy Saver Cycle'' to be demonstrated and evaluated.

1. The size of the six water draws will be adjusted such that the BTUs of delivered hot water (BTUs to heat the water from 58F to delivery temperature) is equal to BTUs for the six 10.7 gallon draws heated from 58F to 135F. This calculation = (Gallons × Lbs./gal. × Specific Heat × (delivered temp. − 58F) = (6851 BTU for 10. 7 gal. heated from 58F to 135F). Since the delivered water temperature is not a constant during a draw, this calculation could be accomplished by using ''Simpson's Rule'' method or another suitable numerical method to integrate the delivered water temperature-volume function. The water draw is started and the total is calculated every 5 seconds until the 6851 BTU of delivered hot water energy is reached. The actual volume of each draw will vary inversely as the delivered water temperature varies. The Energy Saver Cycle typically draws about 90 to100 gallons versus the 64.2 gallons of the current test procedure. The hot water energy delivered in both cases is the same.

One approach to running this modified test on a heater with an ''Energy Saver Cycle'' would be to set up the heater as ''normal'' with the thermostat set to give a mean tank temperature of 135 °F. Then run the test draw sequence repeatedly until the temperature adjustment logic of the control lowers the temperature to the lowest stable temperature. At that point, a full 24 hour efficiency test would be conducted to determine the efficiency of the heater using Energy Saver Cycle. This would require over 100 draw and reheat cycles using our control algorithm. This approach is impractical. The practical approach is to run the control in normal mode and adjust the water temperature to the lowest stable temperature that the ''Energy Saver Cycle'' would reach if the above approach were used.

2. *Definition of lowest stable temperature:* This is the lowest water temperature set point such that when the six draw sequence in step 1 is performed, the control will not adjust the set point higher. In our control logic, the set point is increased if the cold water rises far enough in the tank to cause the upper element to come on. Thus for our control logic, the lowest temperature where the draw sequence in step 1 doesn't cause the upper element to come on is our ''lowest stable temperature''. Other control logic could result in another ''lowest stable temperature'' point. To determine this temperature, the tester would need to know the temperature adjustment logic for the Energy Saver Cycle. He would set the test water temperature to the lowest stable temperature based on that logic. He then would observe the draw quantities and temperatures during the efficiency test to see that a temperature adjustment condition was not present. If a temperature adjustment would have been made the test is invalid and the

test would need to be repeated at a higher temperature.

3. In the current procedure, the mean tank temperature is to be adjusted to 135F. There are three places in the calculation of efficiency where the raw data is adjusted back to 135F to correct for variation between actual and ideal test conditions. Since the Energy Saver Cycle test doesn't run at 135F mean tank temperature, this correction needs to be changed to reflect the new test conditions. This means that the hard coded 135 values in the calculations must be changed to a variable so the actual value can reflect the current test conditions. The most appropriate variable is ''Tsu'' which is the maximum mean tank temperature observed after the sixth draw. In the current procedure, Tsu must be 135F ± 5F and is the logical equivalent of the 135F of the current procedure. Thus the calculation of Qda is changed from

$$Qda = Qd - ((Tstby,2 - Ta,stby,2) - (135 - 67.5))\ UA\ tstby,2\ to$$

$$Qda = Qd - ((Tstby,2 - Ta,stby,2) - (Tsu - 67.5))\ UA\ tstby,2\ and\ QHW,77\ is\ change\ from$$

$$QHW,77 = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (135F - 58F)}{Nr}\ to\ QHW,77 = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (Tsu - 58F)}{Nr}$$

$$Ef\ is\ changed\ from\ Ef = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (Tsu - 58F)}{Qdm}\ to\ Ef = \sum_{i=1}^{6} \frac{Mi\ Cpi(Tsu - 58F)}{Qdm}.$$

Conclusion

New technologies can foster changes that obsolete current practices. American Water Heater's adaptive control has created an energy saving control method that was not anticipated or covered by the current DOE test procedure. This waiver will allow the efficiency benefits of this improved control method to be demonstrated while the test procedures are modified to keep up with technology. This change in control method will reduce water heater energy consumption, and thus its adoption by the industry should be encouraged. This can best be done by granting this waiver and modifying the test procedure. Confidential test data, which demonstrates the energy efficiency benefit, can be made available upon your request.

Respectfully submitted,

Timothy J. Shellenberger,
Sr. Vice President—Product Engineering.

April 26, 2001

Assistant Secretary for Conservation and Renewable Energy United States Department of Energy,
1000 Independence Avenue, SW.,
Washington, DC 20585

To Whom It May Concern: Subject: Application for Interim Waiver.

American Water Heater Company seeks a waiver in the application of the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' contained in 10 CFR Part 430 Subpart B Appendix E as applied to electric water heater models that have adaptive electronic controls. We are seeking this interim waiver to allow the initial marketing of our new product to claim the benefits of the ''Energy Saving Cycle'' as described in the petition for waiver.

We feel that the interim waiver should be granted because it is likely that the petition for waiver will be granted. The new technology addressed by the petition for waiver yields a legitimate energy savings and improvement in the energy efficiency level of this category of appliance. This improvement serves the interest and goal of the Department of Energy and thus should be supported. Allowing the waiver will encourage other manufacturers to produce similar products creating a general improvement in energy conservation. As new technology is developed, test procedures need to be modified to accommodate the improvement and allow the benefits to be shown to the consumer. These are all good arguments as to why the waiver should be granted and thus the interim waiver be granted.

From an economic point of view, American Water Heater Company has invested significantly in the development of this product and to not be able to present one of its best features would cause loss of sales and discourage further development.

Respectfully submitted,

Timothy Shellenberger,
Sr. Vice President—Product Engineering.

TJS/meh

I, the undersigned, on behalf of American Water Heater Company, hereby certify that a copy of the foregoing Petition for Waiver and Petition for Interim Waiver, has been sent to each of the following known manufacturers of domestically marketed units of the same product type (as listed in Section 322(a) of the Act), as follows:

Rheem Water Heater Division, Rheem Manufacturing Company, 2600 Gunter Park Drive East, Montgomery, AL 36109–1413, Attention: Scott D. Martin

A.0. Smith Water Products Company, Rochelle Park, Suite 200, 600 E. John Carpenter Freeway, Irving, TX 75062–3990, Attention: Ronald Massa

Bradford White Corporation, 200 Lafayette Street, Middleville, MI 49333–9492, Attention: Eric M. Lannes

State Industries, 500 Lindahl Parkway, Ashland City, TN 37015–1234, Attention: John R. Lindahl, Jr.

Lochinvar Corporation, 2005 Elm Hill Pike, Nashville, TN 37210–3807, Attention: Mr. William L. Vallett, Jr.

I further hereby certify that the Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

This the 26th day of April 2001.
Timothy J. Shellenberger.

DOE WAIVER MODEL COMPARISON

AWHC wholesale models electronic	AWHC retail models electronic	AWHC wholesale models standard	AWHC retail models standard	RHEEM (Richmond, Rudd, GE)	A.O. Smith	Bradford White	State Industries (Reliance, Maytag, Sears)	Lochinvar
EE92-40H***D***	EE2H40HD******	E92-40H***D***	E2H40HD******	81XH40D MDH40-2 82R40-2 EXR40-2	PEST-40	M-I-40T1ODS M-II-40T1ODS	PS-40-20RT 9-40-2KRT HE20-40T SSX-40-2LRT 32746	STA040KK-3

DOE WAIVER MODEL COMPARISON—Continued

AWHC wholesale models electronic	AWHC retail models electronic	AWHC wholesale models standard	AWHC retail models standard	RHEEM (Richmond, Rudd, GE)	A.O. Smith	Bradford White	State Industries (Reliance, Maytag, Sears)	Lochinvar
EE122-40H***D***	EE2J40HD******	E122-40H***D***	E2J40HD******	81XH40D MEH40-2	PEST-40	M-I-40T10DS M-II-40T10DS	PX-40-20RT 9-40-2KRT HE29-40T SSX-40-2LRT 32746 12-40-2ART	STA040KK-3
EE122-40H***D***	EE3H40HD******	E93-40H***D***	E3H40HD******	MR40245 MP40245	PEHT-40	M-III-40T10DS	32049 LT-40-2LRT	
EE93-40H***D***	EE3J40HD******	E123-40H***D***	EJ40HD******	MR40245 MP40245	PDHT-40	M-III-40T10DS	32049 LT-40-2LRT	
EE92-40R***D***	EE2H40RD******	EE92-40R***D***	E2H40RD******	RMEMKR 40-2	PES-40	M-III-40S10DS	SSX-40-2LRS 9-40-2KRS	
EE122-40R***D***	EE2J40RD******	E122-40R***D***	E2J40RD******	RMEMKR 40-2 PE40M9A	PES-40	M-II-40S10DS	SSX-40-2LRS 9-40-SK4S 12-40-2ARS	
EE93-40R***D***	EE3H40RD******	E93-40R***D***	E3H40RD***H***	RMEMXR 40-2TI SE40M12A	PEC-40		HE21240S LT 40-2LRS	
EE123-40R***D***	EE3J40RD******	E123-40R***D***	E3J40RD******	RMEMXR 40-2TI SE40M12A	PEC-40		HE21240S LT 40-2LRS	
EE92-50H***D***	EE2H50HD******	E92-50H***D***	E2H50HD******	81X52 D ME52-2 RMEKR 50-2 PE50T9A 82XR52-2 EXR52-2	PEST-52	M-II-50T10DS	PX-52-20RT 9-52-2KRT HE29 50T 32756 SSX-52-2LRT	STA052KK-3
EE122-50H***D***	EE2J50HD******	E122-50H***D***	E2J50HD******	RMEXR 50-2TI SE50T12A		M-II-50T10DS	12-52-ART 32059	
EE93-50H***D***	EE3H50HD******	E93-50H***DC***	E3H50HD***C***	MR50245 MP50245	PEH-52	M-III-50T10DS	HE212 50T LT-52-2LRT 32151	
EE123-50H***D***	EE3J50HD******	E123-50H***DC***	E3J50HD***C***	MR50245 MP50245	PEH-52	M-III-50T10DS	HE212 50T LT-52-2LRT 32151	
EE92-50R***D***	EE2H50RD******	E92-50R***D***	E2H50RD******	RMEMKR 50-2 PE50M9A 82 MXR52-2 EMXR52-2	PES-52	M-II-50S10DS	PX-52-2ORS SSX-52-2LRS 9-52-2KRS HE2950S	
EE122-50R***D***	EE2J50RD******	E122-50R***D***	E2J50RD******	RMEMXR 50-2TI SE50M12A	PEC-52		12-52-2ARS HE212 50S	
EE93-50R***D***	EE3H50RD******	E93-50R***DC***	E3H50RD***C***				LT-52-2LRS	
EE123-50R***D***	EE3J50RD******	E123-50R***DC***	E3J50RD***C***					
EEZ3-50R***D***	EE3Z50RD******	EZ3-50R***DC***	E3Z50RD***C***	MSR50245				
EE92-65H***D***	EE2H65HD******	E92-65H***D***	E2H65HD******	81X66D ME66-2 RMEKR65-2 82XR66-2 EXR66-2 PE65T9A	PEC-66	M-II-65R10DS	HE29 66T 32766 SSX-66-2LRT	STA066KK-3
E122-65H***D***	EE2J65HD******	E122-65H***D***	E2J65HD******				12-66-2ART	
EE93-65H***D***	EE3H65HD******	E93-65H***DC***	E3H65HD***C***					
E123-65H***D***	EE3J65HD******	E123-65H***DC***	E3J65HD***C***	RMEXR 65-2TI	PEH-66	M-III-65R10DS	32069	
EE92-80H***D***	EE2H80HD******	E92-80H***D***	E2H80HD******	RMEKR80-2 82XR80-2 EXR80-2	PES-80		32786 SSX-82-2LRT	STA082KK-3
EE122-80H***D***	EE2J80HD******	E122-80H***D***	E2J80HD******		PEC-80		12-82-2ART	
EE93-80H***D***	EE3H80HD******	E93-80H***DC***	E3H80HD***C***					
EE123-80H***D***	EE3J80HD******	E123-80H***DC***	E3J80HD***C***	RMEXR 80-2TI SE80T12A MR85245 MP85245	PEH-80	M-III-80R10DS	HE212 82T 32089 LT 82-2LRT	

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BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11346; Notice No. 02–06]

RIN 2120–AH38

Lower Deck Service Compartments on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning lower deck service compartments. The proposed amendment would require that two-way voice communication systems between lower deck service compartments and the flightdeck remain available following loss of the normal electrical power generating system. It also would clarify the requirements for seats installed in the lower deck service compartment. 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 25, 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 No. FAA–2002–11346 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–XXXX.'' 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: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2194; facsimile 425–227–1320, e-mail *jayson.claar@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at http://www.faa.gov/avr/armhome.htm or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is ''Harmonization'' and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the

requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry (including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)) proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested one minor editorial change, which has been incorporated into this NPRM.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this NPRM, the FAA proposes to amend § 25.819, concerning lower deck service compartments on transport category airplanes. A lower deck service compartment as used in § 25.819 is defined as follows: ''A lower deck service compartment is a galley or other service compartment located below the main passenger deck that is accessible during flight by crewmembers. A lavatory is not considered a lower deck service compartment and therefore is not covered by this regulation. Occupancy is not permitted during taxi, takeoff and landing. Also, it is limited to crewmembers only.'' This action has

been identified as a Category 1 (Envelope) project under the Fast Track program.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The standards ensure the safety of occupants of lower deck service compartments that are not certified to be occupied during takeoff and landing. The standards apply design criteria relative to evacuation routes and various items of safety equipment. Many of the regulations that provide evacuation requirements and safety equipment address passenger and flightcrew compartments, but do not include lower deck service compartments.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.819 (Amendment 25–53 (45 FR 41593, June 19, 1980)) is:

Section 25.819 Lower deck service compartments (including galleys).

For airplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant or the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exit to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(c) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the lift if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

The current text of JAR paragraph 25.819 (Change 15, Amendment 25/96/1, October 2000) is:

JAR 25.819 Lower deck service compartments (including galleys).

For aeroplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant or the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exit to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of JAR 25.785 (d) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the lift if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

What Are the Differences in the Standards and What Do Those Differences Result in?

There are two substantive differences between the standards:

First, the JAR requires that two-way voice communication between the flight deck and each lower deck service compartment remain available following loss of the normal electrical power generating system. Part 25 does not contain such a requirement. This results in system power on those airplanes certificated under the JAR being supplied from the essential bus; whereas, system power on airplanes certificated under part 25 may be supplied from a nonessential bus.

Second, the requirements for the seats located in the lower deck compartment are different between the part 25 and the JAR. Section 25.819(f) of part 25 requires that installed seats must meet the requirements of § 25.785(*c*), while JAR paragraph 25.819(f) requires that installed seats must comply with the requirements of JAR paragraph 25.785(*d*). At the current amendment levels, § 25.785(c) and JAR paragraph 25.785(d) present different requirements, although at one time (prior to Amendment 25–72) they were the same. This apparently is due to a renumbering error that occurred at Amendment 25–72, in which paragraph (c) of § 25.785 became paragraph (d), and there was no associated change to the reference in § 25.819(f). Thus, by referring to § 25.785(*c*), § 25.819(f) currently requires only that seats be ''approved,'' which is not what was intended. The intent is that seat designs must comply with the specific design safety criteria that is described in § 25.785(d) (including a safety belt and either a shoulder harness, an energy absorbing rest, or no injurious objects present in the head strike path, as

appropriate). The correct reference in § 25.819 should be to § 25.785(d).

What, If Any, Are the Differences in the Means of Compliance?

Currently, U.S. manufacturers must comply with the more stringent JAR requirements if they intend to sell their airplanes in Europe. Future certificated airplanes also are expected to meet the existing JAR requirements.

What Is the Proposed Action?

The FAA proposes to amend § 25.819 by incorporating the ''more stringent'' requirements of the current JAR standard. The proposed amendment would require that:

- Two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system.
- Seats installed in the lower deck compartment meet the requirements of § 25.785(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the original underlying safety issue. It would ensure the safety of occupants of lower deck service compartments that are not certified to be occupied during takeoff and landing.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

By requiring the more stringent standards of the JAR, the proposed amendment would mandate a higher level of safety than that provided by the currently applicable requirements.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

In current practice, U.S. manufacturers already are complying with the more stringent JAR requirements in order to sell their airplanes in Europe. Future certificated airplanes also are expected to meet the existing JAR requirements, and this proposed rule would simply adopt those same requirements.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considered two alternatives to this proposal:

1. *No change to the existing standards.* The FAA did not select this option because it would mean that the standards would continue to be ''unharmonized'' and manufacturers would continue to meet two different sets of standards when certificating their airplanes.

2. *The JAA could unilaterally adopt the standards of part 25.* The FAA did not seriously consider this option, however, because where the part 25 standards are ''less stringent,'' this could potentially mean adopting a lower level of safety.

The FAA considers the proposal, as contained in this NPRM, to be the most appropriate method of ensuring that the highest level of safety is achieved and fulfilling the objectives of harmonizing the U.S. and European standards.

Who Would Be Affected by the Proposed Change?

Manufacturers of transport category airplanes, as well as airplane modifiers potentially would be affected by the proposed amendment.

Is Existing FAA Advisory Material Adequate?

The FAA does consider that current guidance on this subject is adequate and that additional advisory material is not necessary as a result of the proposed rule.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal has no substantial costs, and that it is not ''a significant regulatory action'' as defined in Executive Order 12866, nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows:

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as ''harmonization.''

This proposal would revise the FAA requirements for lower deck service compartments on transport category airplanes that are not certified to be occupied during takeoff and landing. As explained previously in this preamble, this proposal would revise part 25 to include the following ''more stringent'' requirements of the JAR standards:

- § 25.819(b): two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system; and
- § 25.819(f): seats installed in the lower deck compartment meet the requirements of § 25.785(d), which include safety belt and either a shoulder

harness, and/or energy absorbing rest, and/or elimination of injurious objects in the head strike path.

This proposed rule results from the FAA's acceptance of recommendations made by ARAC. We have concluded that, for the reasons previously discussed in the preamble, the adoption of the proposed requirements in 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

There was consensus within the ARAC members, comprised of representatives of the affected industry, that the requirements of the proposed rule will not impose additional costs on U.S. manufacturers of part 25 airplanes. Concerning the cost impact of complying with the proposed standard, ARAC states there are apparent administrative savings for the relevant airworthiness authorities and indirect savings for the general public. In fact, ARAC believes that the industry would estimate the cost burden being at a neutral level. We have reviewed the cost analysis provided by industry through the ARAC process. A copy is available through the public docket. Based on this analysis, we consider that a full regulatory evaluation is not necessary.

We invite comments with supporting documentation regarding the regulatory evaluation statements based on ARAC's proposal.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category airplane manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport category airplane manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for airplane manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it complies with the Act because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance

with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the 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 § 25.819 by revising paragraphs (b) and (f) to read as follows:

§ 25.819 Lower deck surface compartments (including galleys).

* * * * *

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

* * * * *

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(d), and must be able to withstand maximum flight loads when occupied.

* * * * *

Issued in Renton, Washington, on January 8, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1766 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards; Correction

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects part 542 of a proposed rule published in the **Federal Register** on December 26, 2001, regarding the Minimum Internal Control Standards. This correction remedies formatting changes made to the proposed rule and clarifies with which sections Tribal gaming operations are to comply.

FOR FURTHER INFORMATION CONTACT: Michele F. Mitchell, 202–632–7003.

Correction

In the proposed rule FR Doc. 01–30788, beginning on page 66500 in the issue of December 26, 2001, make the following correction:

1. On page 66506, in the second column, correct § 542.3(a)(1) to read as follows:

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier.*

(1) Tier A gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.20 through 542.23 of this part.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.30 through 542.33 of this part.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.40 through 542.43 of this part.

* * * * *

Dated: January 9, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–882 Filed 1–23–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking that will clarify the application of section 263(a) of the Internal Revenue Code to expenditures incurred in acquiring, creating, or enhancing certain intangible assets or benefits. This document also invites comments from the public regarding these standards. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by March 25, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–125638–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125638–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions

electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax__regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor (202) 622–7180; concerning the proposals, Andrew J. Keyso (202) 927–9397 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The IRS and Treasury Department are reviewing the application of section 263(a) of the Internal Revenue Code to expenditures that result in taxpayers acquiring, creating, or enhancing intangible assets or benefits. This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking.

A fundamental purpose of section 263(a) is to prevent the distortion of taxable income through current deduction of expenditures relating to the production of income in future taxable years. See *Commissioner* v. *Idaho Power Co.,* 418 U.S. 1, 16 (1974). Thus, the Supreme Court has held that expenditures that create or enhance separate and distinct assets or produce certain other future benefits of a significant nature must be capitalized under section 263(a). See *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992); *Commissioner* v. *Lincoln Savings & Loan Ass'n,* 403 U.S. 345 (1971).

The difficulty of translating general capitalization principles into clear, consistent, and administrable standards has been recognized for decades. See *Welch* v. *Helvering,* 290 U.S. 111, 114–15 (1933). Because courts focus on particular facts before them, the results reached by the courts are often difficult to reconcile and, particularly in recent years, have contributed to substantial uncertainty and controversy. The IRS and Treasury Department are concerned that the current level of uncertainty and controversy is neither fair to taxpayers nor consistent with sound and efficient tax administration.

Recently, much of the uncertainty and controversy in the capitalization area has related to expenditures that create or enhance intangible assets or benefits. To clarify the application of section 263(a), the forthcoming notice of proposed rulemaking will describe the specific categories of expenditures incurred in acquiring, creating, or enhancing intangible assets or benefits that taxpayers are required to capitalize. In addition, the forthcoming notice of proposed rulemaking will recognize that many expenditures that create or enhance intangible assets or benefits do not create the type of future benefits for which capitalization under section 263(a) is appropriate, particularly when the administrative and record keeping costs associated with capitalization are weighed against the potential distortion of income.

To reduce the administrative and compliance costs associated with section 263(a), the forthcoming notice of proposed rulemaking is expected to provide safe harbors and simplifying assumptions including a ''one-year rule,'' under which expenditures relating to intangible assets or benefits whose lives are of a relatively short duration are not required to be capitalized, and ''de minimis rules,'' under which certain types of expenditures less than a specified dollar amount are not required to be capitalized. The IRS and Treasury Department are also considering additional administrative relief, for example, by providing a ''regular and recurring rule,'' under which transaction costs incurred in transactions that occur on a regular and recurring basis in the routine operation of a taxpayer's trade or business are not required to be capitalized.

The proposed standards and rules described in this document will not alter the manner in which provisions of the law other than section 263(a) (e.g., sections 195, 263(g), 263(h), or 263A) apply to determine the correct tax treatment of an item. Moreover, these standards and rules will not address the treatment of costs other than those to acquire, create, or enhance intangible assets or benefits, such as costs to repair or improve tangible property. The IRS and Treasury Department are considering separate guidance to address these other costs.

The following discussion describes the specific expenditures to acquire, create, or enhance intangible assets or benefits for which the IRS and Treasury Department expect to require capitalization in the forthcoming notice of proposed rulemaking. The IRS and Treasury Department anticipate that other expenditures to acquire, create, or enhance intangible assets or benefits generally will not be subject to capitalization under section 263(a).

A. Amounts Paid To Acquire Intangible Property

1. Amounts Paid To Acquire Financial Interests

Under the expected regulations, capitalization will be required for an amount paid to purchase, originate, or otherwise acquire a security, option, any other financial interest described in section 197(e)(1), or any evidence of indebtedness. For a discussion of related transaction costs see section C of this document.

For example, a financial institution that acquires portfolios of loans from another person or originates loans to borrowers would be required to capitalize the amounts paid for the portfolios or the amounts loaned to borrowers.

2. Amounts Paid To Acquire Intangible Property From Another Person

Under the expected regulations, capitalization will be required for an amount paid to another person to purchase or otherwise acquire intangible property from that person. For a discussion of related transaction costs see section C of this document.

For example, an amount paid to another person to acquire an amortizable section 197 intangible from that person would be capitalized. Thus, a taxpayer that acquires a customer base from another person would be required to capitalize the amount paid to that person in exchange for the customer base. On the other hand, a taxpayer that incurs costs to create its own customer base through advertising or other expenditures that create customer goodwill would not be required to capitalize such costs under this rule.

B. Amounts Paid To Create or Enhance Certain Intangible Rights or Benefits

1. 12-Month Rule

The IRS and Treasury Department expect to propose a 12-month rule applicable to expenditures paid to create or enhance certain intangible rights or benefits. Under the rule, capitalization under section 263(a) would not be required for an expenditure described in the following paragraphs 2 through 8 unless that expenditure created or enhanced intangible rights or benefits for the taxpayer that extend beyond the earlier of (i) 12 months after the first date on which the taxpayer realizes the rights or benefits attributable to the expenditure, or (ii) the end of the taxable year following the taxable year in which the expenditure is incurred.

The IRS and Treasury Department request comments on how the 12-month rule might apply to expenditures paid to create or enhance rights of indefinite duration and contracts subject to termination provisions. For example, comments are requested on whether costs to create contract rights that are terminable at will without substantial

penalties would not be subject to capitalization as a result of the 12-month rule.

2. Prepaid Items

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount prepaid for goods, services, or other benefits (such as insurance) to be received in the future.

For example, a taxpayer that prepays the premium for a 3-year insurance policy would be required to capitalize such amount under the rule.

Similarly, a calendar year taxpayer that pays its insurance premium on December 1, 2002, for a 12-month policy beginning the following February would be required to capitalize the amount of the expenditure. The 12-month rule would not apply because the benefit attributable to the expenditure would extend beyond the end of the taxable year following the taxable year in which the expenditure was incurred. On the other hand, if the insurance contract had a term beginning on December 15, 2002, the taxpayer could deduct the premium expenditure under the 12-month rule because the benefit neither extends more than 12 months beyond December 15, 2002 (the first date the benefit is realized by the taxpayer) nor beyond the taxable year following the year the expenditure was incurred.

3. Certain Market Entry Payments

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to an organization to obtain or renew a membership or privilege from that organization.

For example, subject to the 12-month rule, the rule would require capitalization of costs to obtain a stock trading privilege, admission to practice medicine at a hospital, and access to the multiple listing service. The rule does not contemplate requiring capitalization for costs to obtain ISO 9000 certification or similar costs.

4. Amounts Paid To Obtain Certain Rights From a Governmental Agency

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to a governmental agency for a trade name, trademark, copyright, license, permit, or other right granted by that governmental agency.

For example, under the rule, a restaurant would be required to capitalize the amount paid to a state to obtain a license to serve alcoholic beverages that is valid indefinitely.

5. Amounts Paid To Obtain or Modify Contract Rights

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount (e.g., $5,000) paid to another person to induce that person to enter into, renew, or renegotiate an agreement that produces contract rights enforceable by the taxpayer, including payments for leases, covenants not to compete, licenses to use intangible property, customer contracts and supplier contracts. The IRS and Treasury Department request comments on whether there are standards other than the standard described above that would be more appropriate for determining whether expenditures related to the creation or enhancement of contractual rights should be capitalized.

Subject to the 12-month rule, this rule would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to enter into a lease. This rule also would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to terminate a lease and enter into a new lease. See, e.g., *U.S. Bancorp* v. *Commissioner,* 111 T.C. 231 (1998). However, this rule would not require a lessee to capitalize an amount paid to a lessor to terminate a lease where the parties do not enter into a new or renegotiated agreement. This rule also would not require a taxpayer to capitalize a payment that does not create enforceable contract rights but, for example, merely creates an expectation that a customer or supplier will maintain its business relationship with the taxpayer. See, e.g., *Van Iderstine Co.* v. *Commissioner,* 261 F.2d 211 (2nd Cir. 1958).

6. Amounts Paid To Terminate Certain Contracts

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid by a lessor to a lessee to induce the lessee to terminate a lease of real or tangible personal property or by a taxpayer to terminate a contract that grants another person the exclusive right to conduct business in a defined geographic area.

For example, under the rule, a lessor that pays a lessee to terminate a lease of real property with a remaining term of 24 months would be required to capitalize such payment. See, e.g., *Peerless Weighing and Vending Machine Corp.* v. *Commissioner,* 52 T.C. 850 (1969). On the other hand, if the lease had a remaining term of 6 months, the 12-month rule would apply, and the taxpayer would not be required to capitalize the termination payment under the rule.

As a further example, where a taxpayer grants another person the exclusive right to develop the taxpayer's motel chain in four states, and the taxpayer later pays that other person to terminate such right at a time when the remaining useful life of the right is 5 years, the taxpayer would be required to capitalize the termination payment under the rule. *See Rodeway Inns of America* v. *Commissioner,* 63 T.C. 414 (1974).

7. Amounts Paid in Connection With Tangible Property Owned by Another

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount paid to facilitate the acquisition, production, or installation of tangible property that is owned by a person other than the taxpayer where the acquisition, production, or installation of the tangible property results in the type of intangible future benefit to the taxpayer for which capitalization is appropriate. This rule would apply even though there is no contractual relationship between the taxpayer and the other person. This rule is intended to require capitalization of expenditures that produce intangible future benefits similar to those that were in issue in *Kauai Terminal Ltd.* v. *Commissioner,* 36 B.T.A. 893 (1937) (expenditure incurred to construct a publicly owned breakwater for the purpose of increasing taxpayer's freight lighterage operation). The IRS and Treasury Department request comments on standards that can be established to ensure that the expenditures described in this rule result in the type of future benefits that are similar to those in *Kauai Terminal* and therefore should be capitalized. The IRS and Treasury Department also request comments on whether safe harbors or dollar thresholds should be used to determine whether capitalization of such expenditures is appropriate under section 263(a).

8. Defense or Perfection of Title to Intangible Property

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts paid to defend or perfect title to intangible property.

For example, under the rule, if a taxpayer and another person both claim title to a particular trademark, the taxpayer must capitalize any amount paid to the other person for relinquishment of such claim. See, e.g., *J.J. Case Company* v. *United States,* 32 F.Supp. 754 (Ct. Cl. 1940).

C. Transaction Costs

The IRS and Treasury Department expect to propose a rule that requires a taxpayer to capitalize certain transaction costs that facilitate the taxpayer's acquisition, creation, or enhancement of intangible assets or benefits described above (regardless of whether a payment described in sections A or B of this document is made). In addition, this rule would require a taxpayer to capitalize transaction costs that facilitate the taxpayer's acquisition, creation, restructuring, or reorganization of a business entity, an applicable asset acquisition within the meaning of section 1060(c), or a transaction involving the acquisition of capital, including a stock issuance, borrowing, or recapitalization. However, this rule would not require capitalization of employee compensation (except for bonuses and commissions that are paid with respect to the transaction), fixed overhead (e.g., rent, utilities and depreciation), or costs that do not exceed a specified dollar amount, such as $5,000. The IRS and Treasury Department request comments on how expenditures should be aggregated for purposes of applying the de minimis exception, whether the de minimis exception should allow a deduction for the threshold amount where the aggregate transaction costs exceed the threshold amount, and whether there are certain expenditures for which the de minimis exception should not apply (e.g., commissions).

The IRS and Treasury Department are considering alternative approaches to minimize uncertainty and to ease the administrative burden of accounting for transaction costs. For example, the rules could allow a deduction for all employee compensation (including bonuses and commissions that are paid with respect to the transaction), be based on whether the transaction is regular or recurring, or follow the financial or regulatory accounting treatment of the transaction. The IRS and Treasury Department request comments on whether the recurring or nonrecurring nature of a transaction is an appropriate consideration in determining whether an expenditure to facilitate the transaction must be capitalized under section 263(a) and, if so, what criteria should be applied in distinguishing between recurring and nonrecurring transactions. In addition, the IRS and Treasury Department request comments on whether a taxpayer's treatment of transaction costs for financial or regulatory accounting purposes should be taken into account when developing simplifying assumptions.

For example, under the rule described above, a taxpayer would be required to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in drafting a 3-year covenant not to compete because such costs facilitated the creation of the covenant not to compete. Similarly, the rule would require a taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in defending a trademark owned by the taxpayer.

Conversely, a taxpayer that originates a loan to a borrower in the course of its lending business would not be required to capitalize amounts paid to secure a credit history and property appraisal to facilitate the loan where the total amount paid with respect to that loan does not exceed the threshold dollar amount. The taxpayer also would not be required to capitalize the amount of salaries paid to employees or overhead costs of the taxpayer's loan origination department.

In addition, the rule would require a corporate taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside counsel to facilitate an acquisition of all of the taxpayer's outstanding stock by an acquirer. See, e.g., *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992). However, the rule would not require capitalization of the portion of officers' salaries that is allocable to time spent by the officers negotiating the acquisition. Cf. *Wells Fargo & Co.* v. *Commissioner,* 224 F.3d 874 (8th Cir. 2000).

The rule also would not require capitalization of post-acquisition integration costs or severance payments made to employees as a result of an acquisition transaction because such costs do not facilitate the acquisition.

D. Other Items on Which Public Comment is Requested

1. Other Costs of Creating, Acquiring or Enhancing Intangible Assets or Benefits That Require Capitalization

The IRS and Treasury Department are considering what general principles of capitalization should be used to identify the costs of acquiring, creating, or enhancing intangible assets or benefits that should be capitalized under section 263(a) but are not described above. The IRS and Treasury Department anticipate that these general principles will apply in rare and unusual circumstances to require capitalization of costs that are similar to those described above. Comments are requested on capitalization principles (for example, a separate and distinct asset test or a significant future benefit test) that can be used to identify other costs that should be capitalized under section 263(a) and the administrability of such principles. The IRS and Treasury Department also request comments on other categories of costs associated with intangible assets or benefits that should be capitalized under section 263(a), but are not described above.

2. Book-Tax Conformity

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which the taxpayer's treatment for financial or regulatory accounting purposes should be taken into account in determining the treatment for federal income tax purposes or to simplify tax reporting.

3. Amortization Periods

Certain intangibles have readily ascertainable useful lives that can be determined with reasonable accuracy, while others do not. The IRS and Treasury Department expect to provide safe harbor recovery periods and methods for certain capitalized expenditures that do not have readily ascertainable useful lives. Comments are requested regarding whether guidance should provide one uniform period or multiple recovery periods and what the recovery periods and methods should be.

4. *De Minimis* Rules

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which it would be appropriate to prescribe de minimis rules that would not require capitalization under section 263(a). If there are such categories or thresholds, comments are requested on how expenditures would be aggregated in applying these de minimis rules.

5. Costs of Software

The IRS and Treasury Department request comments on what rules and principles should be used to distinguish acquired software from developed software and the administrability of

those rules and principles. See Rev. Proc. 2000–50, 2000–2 C.B. 601.

Heather C. Maloy,

Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–1678 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Limited re-opening of the rulemaking record for Occupational Exposure to Tuberculosis (TB).

SUMMARY: The Agency is re-opening the record in the TB rulemaking to allow interested persons to review the National Academy of Sciences/Institute of Medicine (NAS/IOM) report, ''Tuberculosis in the Workplace'' and the comments by the peer reviewers on OSHA's draft final risk assessment. This record re-opening is limited to the draft final risk assessment, the peer review comments on that assessment, and the NAS/IOM report.

DATES: Comments and data must be postmarked no later than March 25, 2002. Comments submitted electronically or by FAX must be submitted by March 25, 2002.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov.* Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the docket office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–2270, FAX (202) 693–1678.

SUPPLEMENTARY INFORMATION: On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). In addition, the Agency provided a draft of its final risk assessment (Ex. 184) for peer review to two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in the use of tuberculin skin testing as a diagnostic for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Public Law 106–113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA is placing it in the record for comment. (Ex. 187)

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1712 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–11358]

RIN 2135–AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and

Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before February 25, 2002.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/oubmit/BlankDSS.asp*. All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC)and the St. Lawrence Seaway Management Corporation (SLSMC)of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System. This requirement would go into effect beginning in the 2002 navigation season. This will be in addition to the existing U.S. and Canadian legal ballast water requirements as well as the tremendous amount of undertakings at the international, national, and regional levels by government and the private sector regarding control of ANS. This rule is one more effort in the commitment of many to find a cost-effective solution that protects the Great Lakes Seaway System from ANS while facilitating commerce.

Specifically, the SLSDC, along with the SLSMC, proposes to amend the Seaway Regulations and Rules in Part 401 of title 33 of the Code of Federal Regulations by adding a new subsection (d) to ''.30, ''quate ballast and proper trim,'' which section would be retitled § llast water and trim.'' This new subsection would require that, to obtain clearance to transit the Seaway, every vessel entering the Seaway must agree to comply with the applicable, existing industry ballast water management practices while operating anywhere within the Great Lakes and the Seaway. This involves two types of vessels and two codes of practice respectively. Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the ''Code of Best Practices for Ballast Water Management'' of the Shipping Federation of Canada dated September 28, 2000. That code reads as follows:

Recognizing that discharge of ballast water from ships is viewed as a principle vector for the introduction and spread of harmful aquatic organisms and pathogens,

Recognizing the role shipowners and vessel operators can play in minimizing the introduction and spread of non-indigenous organisms and protecting the Great Lakes waters,

Considering the current status of technology for the treatment of ballast water and the need to develop standards against which to measure efficiency of management procedures;

Vessels entering into the Great Lakes commit to the following Code of best Practices For Ballast Water Management.

1. To conduct ballast water management whenever practical and at every opportunity even if the vessel is not bound for a port where such a procedure may be required. This process will ensure that residual ballast on board will, to the greatest extent possible, be subjected to these practices. This process will also aid to minimize sediment accumulations in ballast tanks, and where mid-ocean exchange is practiced, subject fresh-water organisms to an extended exposure to salt water.

Where mid-ocean ballast water exchange is the, or one of the management practices used as required by IMO, USCG, Canadian or other regulations, the safety of the ship shall be a top priority and management shall be practiced according to recognized safe practices.

2. To regular inspection of ballast tanks and removal of sediment, if necessary, to at least the level comparable to that required by the vessel's Classification Society in order to conduct a ''close-up'' Enhanced Survey, Ballast Tank Structural and Coating Inspection.

3. To ballast water exchange procedures as provided for in US legislation and approved and enforced through United States Coast Guard Regulations.

4. To record keeping and reporting according to United States Coast Guard Regulations (ballast water report forms)—the master to record all uptake and discharge of ballast water in an appropriate log book; Ballast Water Report Forms to be completed and submitted as per Regulations; inspection and cleaning of ballast tanks to be recorded and records to be made available to inspectors upon request.

5. To provide information and logs to authorized inspectors and regulators for the purposes of verifying the vessel's compliance with this Code of Best Practices.

6. To apply a precautionary approach in the uptake of ballast water by minimizing ballasting operations under the following conditions:

a. In areas identified in connection with toxic algal blooms, outbreaks of known populations of harmful aquatic organisms and pathogens, sewage outfalls and dredging activity.

b. In darkness, when bottom dwelling organisms may rise in the water column.

c. In very shallow water.

d. Where a ship's propellers may stir up sediment.

e. In areas with naturally high levels of suspended sediments, e.g. river mouths, and delta areas, or in locations that have been affected significantly by soil erosion from inland drainage.

f. In areas where harmful aquatic organisms or pathogens are known to occur.

7. To the disposal of accumulated sediments as provided for in the existing IMO Ballast Water Protocols during ocean passages outside International Ballast Water Management Areas or as otherwise approved by Port State Authorities.

8. To foster and support scientific research sampling programs and analysis—Facilitate access to on board sampling and testing of ballast water and sediment including opening of ballast tank covers and safe access to ballast tanks following safety procedures for entering enclosed spaces. Sampling, testing and inspection to be planned and coordinated to fit within vessels' operational programs and minimize any delays.

9. To cooperate and participate in standards development and treatment systems testing and approval processes, including, but not limited to mechanical management and treatment systems, and pesticide management systems as well as improved techniques for ballast water exchange and their scientific assessment.

10. To strive toward global, integrated ballast water management strategies in conformity with internationally agreed principles that respect national and regional aquatic ecosystems. This Code of Best Practices is endorsed by the undersigned and represents our common goal to attain the highest standards of safe ballast water management to minimize the introduction

and spread of aquatic nuisance species in the Great Lakes.

These Federation practices already cover approximately 95% of the commercial oceangoing vessels using the Seaway.

Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the ''Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping'' of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001. That code reads as follows:

Owners and operators of vessels that trade within the Great Lakes and the St. Lawrence Waterway and do not go out beyond the Exclusive Economic Zone (EEZ) recognize their role in reducing the risk of transfer of Aquatic Nuisance Species. Introduction of Aquatic Nuisance Species into the Great Lakes has taken place by ships operating outside the EEZ and has caused ecosystem and economic damage. The co-sponsors of this voluntary plan will take management action to reduce the risk of transferring these species. This plan will apply to U.S and Canadian vessels that operate entirely within the Great Lakes and St. Lawrence Waterway. Design, construction, and structural criteria on some vessels may require consideration and variance from this management practice; however, efforts will be made to comply wherever possible.

For All Vessels Operating Totally Within the Great Lakes and St. Lawrence Waterway System.

None of these practices will be undertaken if the master feels the safety of crew or ship will be compromised

1. Vessel operators will assist in developing programs such as the Duluth-Superior Harbor and Alpena, Michigan Ruffe Voluntary Ballast Management Programs should U.S. Fish and Wildlife Service or an equivalent Canadian authority determine a nuisance species has established niche communities in a specific harbor, providing that these programs will result in substantial prevention of the spread of the species or harmful organism via ballast water.

2. Each vessel will perform annual inspections to assess sediment accumulations. Removal of sediment, if necessary, will be carried out. Records of these actions will be kept onboard the ship.

3. Each company will develop sediment removal policies and plans.

4. When practical and safe, vessels will take only the minimum amount of ballast required to safely depart the dock and will complete ballasting in deeper water. Records of all ballasting operations will be kept onboard the ship.

5. Cooperation will be provided, as mutually agreed upon, for scientific research into sampling and analysis programs that will not interfere with normal and safe ship operations.

6. Cooperation will be provided, as mutually agreed upon, for developing and testing ballast water treatment systems.

7. Cooperation will be provided toward harmonization of regional ballast water practices.

These rules already cover nearly 100% of the commercial non-oceangoing vessels (lakers) using the Seaway.

The texts of both of these codes would be printed in the ''Seaway Handbook,'' which is distributed to Seaway users by the SLSMC and the SLSDC and is also posted on the joint ''Great Lakes St. Lawrence Seaway System Web'' site, which can be found at *http://www.greatlakes-seaway.com/en/pdf/handbook.pdf*. If promulgated, the SLSDC and the SLSMC will assess the effectiveness of this regulation after the 2002 Seaway navigation season.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321,*et seq.*) because it is not a major federal action significantly affecting the quality of human environment. The environmental considerations applicable to the basic substance of this proposed regulation are essentially discussed in the U.S. Coast Guard's Environmental Assessment for its May 17, 1999, ''Implementation of the National Invasive Species Act of 1996'' rulemaking (64 FR 26672).

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. § 401.30 would be amended by revising the heading and by adding a new paragraph (d) to read as follows:

§ 401.30 Ballast water and trim.

* * * * *

(d) Beginning in the 2002 navigation season, to obtain clearance to transit the Seaway:

(1) Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the ''Code of Best Practices for Ballast Water Management'' of the Shipping Federation of Canada dated September 28, 2000, while operating anywhere within the Great Lakes and the Seaway; and

(2) Every other vessel entering the Seaway that operates within the Great

Lakes and the Seaway must agree to comply with the ''Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping'' of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001, while operating anywhere within the Great Lakes and the Seaway.

Issued at Washington, D.C. on January 18, 2002.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–1752 Filed 1–18–02; 2:26 pm]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7131–1]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing approval of the State of Colorado's request to relax the Federal Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline that is supplied to the Denver/Boulder area (hereafter ''Denver area'') from June 1st to September 15th (the ozone control season) of each year. This action proposes to amend our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch (''psi'') to 9.0 psi. EPA has determined that this change to our federal RVP regulations would be consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are approving this amendment to the federal RVP regulations as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 25, 2002.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov.

SUPPLEMENTARY INFORMATION: This document concerns the amendment to EPA's regulations governing the RVP of gasoline supplied to the Denver/Boulder area of Colorado. For further information, please see the information provided in the direct final rule of the same title which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 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, 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 entitlement, 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.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any 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 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. Today's rule merely permanently continues the current relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to incremental evaporative emissions, or to ozone caused by incremental evaporative emissions, resulting from a relaxed RVP standard of 9.0 psi for gasoline in the Denver/Boulder area.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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 proposed 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 proposed rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

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 OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. 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.

For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as:

(1) A small business, including its affiliates: a refinery that has a maximum of 1500 employees—NAICS code 324110, a bulk gasoline station or terminal or gasoline wholesaler that has a maximum of 100 employees—NAICS codes 422710 and 422720, respectively; a gasoline pipeline transporter that has a maximum of 1,500 employees—NAICS code 486910; a gasoline station that has a maximum of $6.5 million annual receipts—NAICS code 447190; and a gasoline station with a convenience store that has a maximum of $20 million annual receipts—NAICS code 447110 (see 13 CFR 121.201);

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of

the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. We have therefore concluded that today's proposed rule will relieve regulatory burden for any small entity.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area. Thus, Executive Order 13175 does not apply to this proposed rule.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Electronic Copies of Rulemaking

For more information about this proposed rule and more details as described in the preamble to the direct final rule see a copy of this rule on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area*

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–1494 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens; 1626 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR part 1626. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1626 Negotiated Rulemaking Working Group will meet on January 28–29, 2002. The meeting will begin at 9:00 a.m. on January 28, 2002. It is anticipated that the meeting will end by 5:00 p.m. on January 29, 2002.

ADDRESSES: The meeting will be held in the First Floor Conference Room at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., N.E., 11th Floor, Washington, DC, 20002; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR part 1626. In September 2001, LSC solicited expressions of interest in participation in a negotiated rulemaking working group. (66 FR 46977, September 10, 2001). The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov*.

Dated: January 18, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 02–1808 Filed 1–22–02; 10:37 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA–2001–11048]

RIN 2127–AI68

Light Truck Average Fuel Economy Standard, Model Year 2004

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish the corporate average fuel economy standard for light trucks manufactured in model year (MY) 2004. The establishment of the standard is required by statute. The proposed standard is 20.7 mpg.

DATES: Comments must be received on or before February 25, 2002. The comment period has been shortened due to a statutory deadline.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Office of Planning and Consumer Programs, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov.* For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Title V was amended from time to time, and was codified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall, at least eighteen months prior to the beginning of each model year, prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for that model year. That section also states that ''[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that, in determining the maximum feasible average fuel economy level, we shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Using this authority, we have set light truck CAFE standards through MY 2003. See 49 CFR 533.5(a). The standard for MY 2003 is 20.7 miles per gallon (mpg)(66 FR 17513; April 12, 2001).

From 1995 through mid-December 2001, the standards-setting process for light truck CAFE standards was affected by restrictions imposed in the Department of Transportation's annual Appropriations Acts.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Public Law 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM), limited to MY 1998, that proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). We adopted this 20.7 mpg-standard in a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for MY 1999. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards at a level other than the standard set for MY 1998. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

Because the same limitation on the setting for CAFE standards was included in the appropriations acts for FYs 1998–2001, we followed that same procedure during those fiscal years and did not issue any NPRMs in the series of rulemakings we conducted to establish the light truck fuel economy standards for MYs 2000–2003. The agency concluded in those rulemakings, as it had when setting the MY 1999 standard, that the restrictions contained in the appropriations acts prevented us from issuing any standards other than the standard set for the prior model year. We also determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

The Department of Transportation and Related Agencies Appropriations Act for FY 2001 was enacted on October 23, 2000. Public Law 106–346. This law provided appropriations for the Department of Transportation for FY 2001, and is the law under which we issued the light truck CAFE standard for MY 2003. While Section 320 of that Act contains a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the Conference Committee Report for that Act directed the National Academy of Sciences (NAS) to conduct a study to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

The NAS submitted its report to the Department of Transportation on July 30, 2001. The report contains a number of key findings and recommendations. The Department of Transportation is in the process of evaluating and responding to the issues raised by the report. With regard to this proposal, however, it is important to note that the NAS also found that any policy change that is implemented in too short a period of time has the potential to adversely affect manufacturers, their suppliers, their employees, and consumers.

The series of restrictions on appropriations ended with the enactment of the Department of Transportation and Related Agencies Appropriations Act for FY 2002 on December 18, 2001. Public Law 107–87. The FY 2002 Appropriations Act, unlike the appropriations acts for fiscal years 1996–2001, does not prevent NHTSA from expending funds to prepare, propose or promulgate fuel economy standards. Accordingly, for the first time since 1995, NHTSA is authorized to expend funds to establish fuel economy standards for non-passenger automobiles at the maximum feasible average fuel economy level in accordance with section 32902(a) of Chapter 329.

The availability of these funds does not, as a practical matter, translate into an effective ability to conduct its customary level of analysis of potential MY 2004 light truck fuel economy standards. NHTSA cannot delay the beginning of rulemaking to establish the

MY 2004 standard to provide time for that analysis. As noted above, NHTSA must establish the fuel economy standard for a given model year at least 18 months before that model year begins. In the case of MY 2004, this statutory deadline requires NHTSA to issue a fuel economy standard on or before April 1, 2002. As the agency was unable, from 1995 until mid-December 2001, to spend any funds for the collection and analysis of data relating to CAFE levels, it has not been able to lay the factual or analytical foundation necessary to develop a proposed standard other than one at 20.7 mpg, the level of the MY 1996–2003 standards.

II. Agency Proposal

The agency is proposing to establish the MY 2004 fuel economy standard for all light trucks manufactured by a manufacturer at 20.7 mpg, the same level previously adopted for MY 2003. The agency's proposal reflects the absence of any current information or analysis regarding the impact of any change in CAFE standards and the capabilities of manufacturers.

The agency is inviting comments, however, on the maximum feasible level of average fuel economy, including comments as to whether motor vehicle manufacturers can, with the limited leadtime available and product plans essentially established, achieve a level higher than 20.7 mpg in MY 2004. In establishing CAFE standards, NHTSA is commanded by section 32902(f) to determine the maximum feasible average fuel economy after considering technological feasibility, economic practicability, the effect of other Government motor vehicle standards on fuel economy, and the need of the United States to conserve energy. NHTSA has traditionally performed the analysis required by section 32902(f) through the publication of requests for information (similar to the one published concurrently with this notice) seeking data from manufacturers and other interested parties regarding technical capabilities, future product plans, anticipated model mix, impact of safety and emissions regulations, the economic impacts of changes in fuel economy standard, the need of the nation to conserve energy and other factors. Once these data are obtained, the agency traditionally assesses the accuracy of manufacturer projections, the likelihood that certain technical innovations may increase fuel efficiency, the potential impact of consumer demand on the composition of manufacturer fleets, the capability of different manufacturers to attain a minimum levels of fuel efficiency, and the effects of weight and other penalties imposed by changes in safety and emissions standards. While this process must be considerably compressed due to the limited time remaining for setting the MY 2004 standard, we will nonetheless consider all comments, including comments with data and analysis suggesting a level higher or lower than 20.7 mpg.

III. Impact Analyses

A. Economic Impacts

This proposal rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Although our proposed standard for MY 2004 does not differ from the fuel economy standards for the preceding model years, we are treating this rule as ''economically significant'' under Executive Order 12866 and ''major'' under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996. This proposal is also considered significant under the Department's regulatory policies and procedures.

As noted above, the agency has been operating under a restriction on the use of appropriations for the last six fiscal years. The restriction has prevented the agency from gathering and analyzing data relating to fuel economy capabilities and the costs and benefits of improving the level of fuel economy. Particularly since that restriction was lifted only very recently, on December 18, 2001, the agency has been unable to prepare an economic analysis for this rulemaking.

B. Environmental Impacts

C. Energy Impacts

NHTSA is not proposing to change the light truck CAFE standard for the 2004 model year. Assuming that this proposal is adopted in a final rule, this action will not have ''a significant adverse effect on the supply, distribution, or use of energy,'' as defined by Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. At this point, therefore, this action is not a ''significant energy action'' under Executive Order 13211 and no ''Statement of Energy Effects'' is required.

D. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the proposed rule would be classified as a ''small business'' under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this proposal regarding the corporate average fuel economy of light trucks would not have a significant economic impact on a substantial number of small entities.

E. Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This proposal would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 more than $100 million annually. For the same reasons discussed in the section above on economic impacts, the agency has been unable to prepare an assessment.

G. Paperwork Reduction Act

There are no information collection requirements in this proposal.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the proposal clearly stated?

—Does the proposal contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the proposal easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting a fuel economy standard for light trucks.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [1] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, i.e., ones regarding the maximum feasible level of corporate average fuel economy for MY 2004 light trucks. Therefore, this proposal is not based on any voluntary consensus standards.

[1] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

L. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this proposal to the Department of Energy for review. That Department did not make any comments that we have not responded to.

IV. Comments

Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, we try to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed,

stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

(2) On that page, click on ''search.''

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. The ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

V. Conclusion

Based on the foregoing, we are proposing to establish the combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2004 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

PART 533—[AMENDED]

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7
2003	20.7
2004	20.7

* * * * *

Issued on: January 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–1675 Filed 1–18–02; 12:25 pm]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 67, No. 16
Thursday, January 24, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of the American Water Heater Company's Energy Saver Control From the DOE Water Heater Test Procedure, Denial of the Application for an Interim Waiver, and Request for Comments on Testing Water Heater Performance With Electronic Controls (Case No. WH–010)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Solicitation of comments.

SUMMARY: This document publishes a Petition for Waiver to the Department of Energy (DOE or Department) water heater test procedure from the American Water Heater Company (American) regarding an adaptive thermostat control. American's Petition for Waiver requests that DOE lower the average tank temperature and base the water draws on equal energy content compared to the existing test procedure. This document also denies an Interim Waiver to American from the existing DOE water heater test procedure. The Department solicits comments, data, and information as to whether to grant the Petition for Waiver as well as comments on testing water heaters with electronic controls.

DATES: DOE will accept comments, data, and information not later than February 25, 2002 on American's Petition for Waiver and comments on testing water heaters with electronic controls.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Building Research and Standards, Case No. WH–010, Mail Stop EE–41, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127. We welcome electronic comments but they must be followed by a signed letter. Send email comments to terry.logee@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1689, email: Terry.Logee@ee.doe.gov or Ms. Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters.

The DOE test procedure, ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' prescribes a method for characterizing the energy requirements of all types of water heaters and yields model-specific energy efficiency information that can aid consumers in their purchasing decisions. The test procedure is set forth in Title 10 CFR part 430, Subpart B, Appendix E.

The Department amended the test procedure rules on September 26, 1980, to provide for a waiver process by adding Section 430.27 to Title 10 CFR part 430. 45 FR 64108. The waiver process allows the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to temporarily waive test procedures for a particular basic model. On November 26, 1986, DOE amended the waiver process to allow the Assistant Secretary to grant an Interim Waiver for immediate relief from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823. The amendment is codified at 10 CFR 430.27(a)(2).

Any person may submit a petition to waive the requirements of the applicable test procedure based on a claim that a basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate a basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. The Department publishes the Petition for Waiver in the **Federal Register** and requests comments from interested parties during a 30-day comment period. The Department analyzes the petition, including all comments, and publishes a notice of each waiver granted or denied in the **Federal Register**. Prior to a decision, the Assistant Secretary will consult with the Federal Trade Commission pursuant to 10 CFR 430.27(l). Waivers generally remain in effect until future test procedure amendments become effective; resolving the problem that is the subject of the waiver.

Any interested person who has submitted a Petition for Waiver may also file an Application for Interim Waiver to the applicable test procedure requirements. The Application may be filed jointly with, or subsequent to, the filing of a Petition for Waiver.

Each Application for Interim Waiver must identify the basic models for which the interim waiver is requested, demonstrate that it meets the criteria in 10 CFR 430.27, and be signed by the applicant or by an authorized representative. In addition, each applicant for an Interim Waiver must notify all known manufacturers of domestically marketed units of the same product type of its filing and provide copies of both the Application for Interim Waiver and the Petition for Waiver to these manufacturers. These manufacturers may send comments to DOE regarding the Petition for an Interim Waiver. An application for an Interim Waiver does not allow the manufacturer to disregard DOE's test procedure requirements until an Interim Waiver has been granted.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27 (g). An Interim Waiver remains in effect for a

period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Summary of Petition

On April 26, 2001, American Water Heater Company filed an Application for Interim Waiver and a Petition for Waiver, Case No. WH–010, concerning the tank temperature of water heaters during testing of water heaters with adaptive electronic controls. There was no confidential material deleted from American's petition. However, American submitted test data at DOE's request which was originally marked confidential. Thereafter, on December 13, 2001, American withdrew its designation of confidentiality for this test data (Letter dated December 13, 2001, from Alex Kovalenko, Manager of Product Development Engineering, American Water Heater Company to Terry Logee, U.S. Department of Energy). The test data is in the docket file. A copy of American's Petition for Waiver and Application for Interim Waiver is appended to this notice.

Whereas the typical electric water heater control has a fixed temperature thermostat setpoint, American's electronic controller can automatically adjust the thermostat setpoint up or down according to actual household water usage patterns. This automatic thermostat adjustment is called an ''Energy Saver Cycle.'' American does not identify any upper or lower thermostat setpoints in its proposal.

American's application seeks the following changes to DOE's test procedure for a controller with an ''Energy Saver Cycle'': (1) Add a qualification test; (2) Decrease the temperature of the thermostat to the lowest stable temperature; (3) Adjust the amount of water withdrawn from the tank during the simulated-use test; and (4) Modify the equations used to compute the energy factor. The current DOE test procedure requires a constant tank temperature of 135 °F and does not permit a variable thermostat setpoint. The test procedure does not have a controller qualification test. DOE's current test procedure also requires a first hour rating test to determine the amount of hot water that can be withdrawn from a tank of water heated to 135 °F.

American's first proposed change for a qualification test for the ''Energy Saver Cycle'' would prove that the controller could automatically adjust the thermostat setpoint. In its proposal, American prescribes a large number of water draws to allow the tank thermostat to reach a minimum setpoint and then to return to 135 °F. The petition calls this control process an ''Energy Saver Cycle'' if the controller reaches an equilibrium temperature lower than 135 °F when the water heater is subjected to the following water usage pattern, herein called draws. Each draw would end when the lower element energizes, and the subsequent draw would commence when the thermostat turns off the power to the lower element. The test would initially start with the tank at 135 °F. The petition states that the sequence will continue until the mean tank temperature reaches 125°F or less. This test shows that the control will lower the set point in response to small water draws. If this sequence is continued, the lowest ''stable'' temperature can be determined. The petition defines the lowest stable temperature as the point at which water draws of 10.7 gallons will not cause the controller to increase the thermostat setpoint.

To test whether the controller will also automatically raise the temperature, water draws large enough to energize the upper element must be made until the controller has returned to the mean tank temperature of 135 °F. These tests demonstrate that the controller adjusts the set point up and down based on actual water usage. Since the ''adjusting'' process could take approximately 100 cycles for the American control logic, the petition seeks to run this test only once for each model of controller; once the controller has been qualified, any water heaters using that controller would qualify to use the ''Energy Saver Cycle'' test procedure.

American's second proposed change would lower the water heater thermostat set point to the lowest stable temperature. This temperature would be obtained through knowledge of the temperature adjustment logic for the ''Energy Saver Cycle''. This lowest stable temperature must be maintained during the six draws of 10.7 gallons or the test is invalid. In this case, the test would need to be repeated at a higher stable temperature.

American's third proposed change is to modify the amount of water drawn in each of the six draws to match the energy contained in each draw of the current procedure. This accounts for the fact that the temperature of the water delivered from the water heater in American's proposal will be lower than that delivered in the current DOE test procedure. Each draw is approximately 10.7 gallons of water and the energy required to raise 10.7 gallons of water from its inlet temperature of 58 °F to 135 °F is 6836 BTU. For the Energy Saver Cycle, the draw would be terminated when 6836 BTU have been removed.

American's fourth proposed change is to modify several calculations in the current test procedure. The calculations in the current DOE test procedure reference a nominal tank temperature of 135 °F and a nominal outlet temperature of 135 °F. The petition for waiver seeks to modify Section 6.1.6, the calculation of the adjusted daily water heating energy consumption from:

$$Q_{da} = Q_D - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - \left(135^\circ\ F - 67.5^\circ\ F\right)\right] UA\tau_{stby,2}$$

to:

$$Q_{da} = Q_D - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - \left(T_{su} - 67.5^\circ\ F\right)\right] UA\tau_{stby,2},$$

where T_{su} is the maximum tank temperature observed after the sixth draw of the simulated-use test.

The petition seeks to change the calculation of $Q_{hw,77}$ in Section 6.1.6 from:

$$Q_{hw,77} = \sum_{i=1}^{6} \frac{M_i C_{p,i} (135^\circ\ F - 58^\circ\ F)}{\eta_r}$$

to:

$$Q_{hw,77} = \sum_{i=1}^{6} \frac{M_i C_{p,i} (T_{su} - 58^\circ\ F)}{\eta_r}$$

The last calculation that the petition for waiver seeks to modify is that of the energy factor in Section 6.1.7. The proposed modification would change the equation from:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p,i} (135^\circ\ F - 58^\circ\ F)}{Q_{dm}}$$

to:

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{p,i} (T_{su} - 58^\circ\ F)}{Q_{dm}}$$

Discussion of American's Petition for Waiver

The Department's waiver regulations provide that the applicant for Interim Waiver is required to notify in writing all known manufacturers of domestically marketed units of the same product type that it has filed an Application for Interim Waiver and a Petition for Waiver and provide copies of these documents to the manufacturers. The regulations also provide that the Assistant Secretary will receive and consider timely written comments on the Application for Interim Waiver. 10 CFR 430.27(c)(2).

The Department received comments from Rheem and Applied Energy Technology (AET). Rheem has indicated DOE should recognize new control technologies for water heaters and should pursue changes to credit resulting energy savings. Rheem is concerned, however, that American's proposed method is designed specifically for one type of control system and disqualifies or discounts other well-known alternative control schemes.

Rheem expressed a concern that the proposed procedure assumes the best-case scenario for the test condition. Rheem indicates that potential savings would only be realized if the ''Energy Saver Cycle'' were selected and if a homeowner's water use patterns resulted in a water heater setpoint temperature below 135 °F. Rheem is concerned the proposed procedure would lead to manufacturers claiming water heater efficiencies not representative of those achieved in practice.

Rheem also believes that the first hour rating would need to be adjusted if the tank temperature is lowered. Rheem states that the revised tank temperature, i.e., the lowest stable temperature, should be used for the first-hour rating test.

AET commented that a comprehensive reexamination of the DOE water heater test procedure is needed to allow proper representation of in-field efficiency improvements made possible by a variety of control approaches. While AET indicates that the proposed test method is an improvement over the current test procedure, AET claims that the proposed test method excludes other forms of controls that could be applied to water heaters and therefore would provide a competitive advantage to American.

AET is concerned that because a lowest stable temperature is not specified in the proposed test procedure, the delivered water temperature could consequently be extremely low. AET also commented that the proposed test procedure's absence of a lower and upper setpoint temperature could be abused. A manufacturer could use a large on-off temperature differential on the upper thermostat so that the upper heating element would not energize. This could allow a lowest stable temperature of about 59 °F, resulting in nearly 100 percent efficiency.

AET's final point echoes the concern of Rheem that the proposed test procedure would yield a best-case scenario and would not necessarily reflect the energy use patterns that are typical of consumers. AET claims that the proposed test procedure does not use long draws, like those seen in actual use that would force the controller to reach a stable temperature different from the lowest stable temperature.

In response to these comments, the Department notes that a waiver is issued for specific basic models and that American has identified those models it is seeking to waive in its petition for waiver. Other basic models or other control schemes would have a different waiver and test procedure. The comments by Rheem and AET on the general test procedure are of use because they have identified issues related to the methodology of how to arrive at a test temperature representative of actual consumer use and how to measure the first hour rating. These issues would need to be discussed and resolved before a waiver could be issued regarding testing of water heaters with electronic controls.

Discussion of American's Application for Interim Waiver

Pursuant to the requirements in 10 CFR 430.27(g), an Interim Waiver will be granted if the applicant can show that it will experience economic hardship if the application for Interim Waiver is denied, if the petition for waiver will likely be granted and/or if the Assistant Secretary determines for public policy reasons to grant immediate relief pending a determination on the petition for waiver. DOE will address each of these criteria separately as applied to American's petition for an interim waiver.

First, DOE does not believe American has provided information in its application for the interim waiver to support its claim of economic hardship. In its application, American merely stated, ''From an economic point of view, American Water Heater Company has invested significantly in the development of this product and to not be able to present one of its best features would cause loss of sales and discourage further development.'' (Letter dated April 26, 2001 from Timothy J. Schellenberger, Senior Vice President—Product Engineering, to the Assistant Secretary, Application for Interim Waiver). American's mere assertion of economic hardship does not establish that it will experience such hardship. American did not provide any factual information to justify its assertion.

Second, at this time, the Assistant Secretary does not have adequate information from American to determine that American's Petition for Waiver from the DOE test procedure will likely be granted. The petition is incomplete for the following reasons:

American's proposed test protocol depends on establishing a lowest stable temperature for their thermostat controller. The procedure outlined in the petition uses a 100 draw-cycle to qualify the controller as having an & ldquo;Energy Saver Cycle''. However, this procedure only establishes that the controller will lower and raise the thermostat setpoint. American did not provide any test data that DOE could use to determine that a lower thermostat setpoint would result from typical household use and what that lower thermostat setpoint might be. For the petition for waiver to be complete, it must contain the test temperature for each basic model for which a waiver is requested. From the confidential test

data that was provided, DOE can only determine that the controller can automatically reduce or raise the thermostat setpoint.

DOE believes that American must provide data from field tests of water heaters using this controller to determine an average lowest stable temperature for the U.S. for each basic model for which a waiver is requested. There are probably a number of variables that should be considered so that the resultant lowest stable temperature is representative of U.S. households including tank volumes, various inlet water temperatures and varying family sizes. The appropriate test time and the allowed variability to demonstrate a ''stable'' temperature would have to be determined. Furthermore, the field tests should contain a sample large enough to be statistically relevant at high confidence. The Department would like to receive comments on the concerns listed above.

DOE recognizes that developing the necessary data to quantify the lowest stable temperature for each basic model could be a time consuming and costly task. Since this petition for waiver from the DOE test procedure for an automatic thermostat controller is the first DOE has received for this type of device, we are very interested in receiving comments that would help develop a general test method for automatic thermostat controllers. For instance, is it practical to develop a computer model that could be used to qualify any automatic controller? Is it possible to use existing databases such as the Energy Information Administration's Residential Energy Consumption Survey for housing and family characteristics combined with average inlet water temperature data from ground water temperatures to develop an algorithm that would yield a reasonable lowest stable temperature? Are there other ways to simplify and generalize the test procedure for an automatic thermostat controller?

Second, American's petition for waiver does not address the first hour rating of the water heater. This test result is used by retailers and installers as an indication of what size water heater to install in a given home. The FTC also uses this value to determine which group of water heaters a given model belongs in for establishing the range of energy factors and yearly costs of operation. In the current DOE test procedure, the first hour rating test starts at a maximum temperature of 135 °oF ±5 °F and continues until the average tank temperature has dropped 25 °F. If the water is reheated within the hour, the draw is initiated again and the water withdrawn is summed. American's proposed modification to the current 24-hour simulated-use test did not provide a first hour rating test which is a necessary component of the water heater test procedure. DOE believes it would be logical for the first hour rating test to be conducted at the same tank temperature as the test for determining the energy factor. However, if that temperature is much lower than the current 135 °F ±5 °F, the final water temperature could be too cool to be considered useful.

Finally, the Department has determined that there are no public policy impacts that warrant granting immediate relief pending a determination on the Petition for Waiver.

Conclusions

Following a careful consideration of all material that was submitted by American and based on the criteria for granting an interim waiver as provided in 10 CFR 430.27(g), and for the reasons stated above, the Department has concluded that American's Application for an Interim Waiver should be denied.

At the same time, the Department solicits comments, data, and information as to whether to grant the Petition for Waiver, as well as comments on testing water heaters with electronic controls. Such comments will assist the Department in determining whether it can develop a practical test procedure for these devices.

Issued in Washington, DC, on January 17, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

April 26, 2001

Assistant Secretary for Conservation and Renewable Energy

United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585

To Whom It May Concern: Subject: Petition for Waiver

Specific Requirements to be Waived.

American Water Heater Company seeks a waiver in the application of the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' contained in 10 CFR Part 430 Subpart B Appendix E as applied to electric water heater models that have adaptive electronic controls.

Utilizing a microprocessor-based control on an electric water heater allows a level of intelligence to be added to the control logic that is not possible with the conventional electro-mechanical control systems used today. One use of this intelligence is to have the control adjust the stored water temperature based on the actual hot water usage pattern to determine the lowest possible temperature to store water that will meet the needs of the consumer. The result of this new control logic is a reduction in energy consumption. Such a control cycle will be identified as an ''Energy Saver Cycle''.

American Water Heater plans to commercialize a microprocessor-based control system with an Energy Saver Cycle. However, we are unable to characterize and market the true efficiency benefit to the consumer through the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' ratings process. The test procedure does not allow the efficiency benefit of an Energy Saver Cycle to be demonstrated. These types of intelligent electronic controls are more expensive and without the ability to demonstrate the benefits in terms of energy savings, it is difficult to justify the additional cost to the consumer. We are specifically petitioning to allow the use of an alternate test procedure described below to rate and label the efficiency of a water heater when using the ''Energy Saver Cycle''.

Basic Models and all Manufacturers

(See attached list)

Design Characteristics

Background Information

The predominate energy loss of a tank type electric water heater is the standby loss associated with storing the hot water. There are two methods of reducing these losses; one can increase the effectiveness of the insulation system, or reduce the stored water temperature. The ''Energy Saver Cycle'' saves energy by reducing the stored water temperature.

The study report ''Baseline Results and Methodology of the Consumer Subgroup Analysis for Residential Water Efficiency Standards'', submitted to the Department of Energy October 1998, shows that the average set point temperature of residential water heaters varies widely across the United States. The northern states tend to be hotter with average set points as high as 142 °F and the south as low as 123 °F. This corresponds inversely with the average inlet water temperature in the same areas. At the time of use, the hot water is blended with cold water to produce the desired use temperature. This process of blending causes the usage quantity of hot water to change inversely with the stored water temperature. For example: A shower

lasting 10 minutes with a delivered water temperature of 105 °F and a flow rate of 2.5 gallons/minute uses 25 gallons of water. If 135 °F hot water, supplied by a water heater, is blended with cold water at 58 °F, the shower will consume 9.74 gallons of cold water and 15.26 gallons of hot water. In contrast, if the hot water supply temperature were reduced to 115 °F the usage proportions would change to 4.39 gallons of cold water and 20.61 gallons of hot water. The energy consumed and the quantity of water used in the shower is the same in both cases but the proportion of heated water goes up. The important difference is that, in the time between showers, the energy consumed to maintain the stored water temperature goes down by 29.85% when the water is stored at 115 °F versus 135 °F. The person taking the shower didn't know the difference except they had to use more hot water to get the desired temperature. As the stored water temperature is further lowered, eventually the water heater will not be able to supply the needed amount of blended hot water and the water temperature will have to be increased.

The adaptive control logic continually adjusts stored water temperature within specified limits to get to the temperature where the maximum demand event can be met by the quantity and temperature of water stored in the heater. This ''Energy Saver Cycle'' will produce real energy savings in a significant number of households and thus deserves to have a test procedure designed to allow the efficiency benefits to be demonstrated. The current test procedure doesn't allow this because the mean tank test temperature is fixed at 135 °F.

Energy Saver Cycle Qualification test

It is simple for a manufacturer to put an electronic control on a water heater and label a cycle as an ''Energy Saver Cycle'' without having an adaptive control that will adjust stored water temperature based on usage. Some examples of other controls that would not qualify for this modified test procedure could be, a conventional control with a fixed but lower set point which is identified as an ''Energy Saver Cycle'' or an off peak type control that simply adjusts the set point based on the time of the day. This new test is required to prove that the control meets the ''Energy Saver Cycle'' criteria as a qualifier to use the energy saver test modifications. The object of the Page 3 test is to confirm that the control does adapt the stored water temperature based on water usage.

The following simple test would be used to prove that the control adapts water temperature to water usage.

1. The unit is set up per the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'', 10 CFR 430.23.

2. The unit is run on normal cycle and the thermostat is adjusted until the mean tank temperature is 135 °F. Then the control is switched to the ''Energy Saver Cycle'' and a series of small draws are made. Each draw should be sufficient to cause the lower element to come on. The lower element will reheat the water until it shuts off at which time another draw will start. This sequence will continue until the mean tank temperature, at the element shutoff point, is 125 °F or less. The mean tank temperature after the first cycle should be 135 °F and the last cycle will be 125 °F or less to show that the control will lower the set point in response to a low water usage situation.

3. Then the draw size will be changed to be large enough that the control will adjust the temperature up. After each reheat the draw will be repeated until the control has adjusted the set point up enough to return the mean tank temperature back to the 135 °F point. At this point, the test would have proven that the control adjusts set point up and down based on actual water usage. If the control can not demonstrate the adaptive ability to adjust stored water temperature based on actual usage, it will not qualify to use the proposed modified procedure.

4. This test is somewhat cumbersome in that a large number of draw reheat cycles would be required to complete the test. In our case, it would require approximately 100 cycles. The test could be automated and allowed to run over night to speed up the qualification process. The test should only have to be run once for a given manufacturer's control. Once the control has been qualified, any units using that control would qualify for the Energy Saver Cycle test sequence.

Test Procedure Changes

Staying with the principal that the delivered hot water energy doesn't change as the stored water temperature changes, the following changes are required to allow the energy savings of an ''Energy Saver Cycle'' to be demonstrated and evaluated.

1. The size of the six water draws will be adjusted such that the BTUs of delivered hot water (BTUs to heat the water from 58F to delivery temperature) is equal to BTUs for the six 10.7 gallon draws heated from 58F to 135F. This calculation = (Gallons × Lbs./gal. × Specific Heat × (delivered temp. − 58F) = (6851 BTU for 10. 7 gal. heated from 58F to 135F). Since the delivered water temperature is not a constant during a draw, this calculation could be accomplished by using ''Simpson's Rule'' method or another suitable numerical method to integrate the delivered water temperature-volume function. The water draw is started and the total is calculated every 5 seconds until the 6851 BTU of delivered hot water energy is reached. The actual volume of each draw will vary inversely as the delivered water temperature varies. The Energy Saver Cycle typically draws about 90 to100 gallons versus the 64.2 gallons of the current test procedure. The hot water energy delivered in both cases is the same.

One approach to running this modified test on a heater with an ''Energy Saver Cycle'' would be to set up the heater as ''normal'' with the thermostat set to give a mean tank temperature of 135 °F. Then run the test draw sequence repeatedly until the temperature adjustment logic of the control lowers the temperature to the lowest stable temperature. At that point, a full 24 hour efficiency test would be conducted to determine the efficiency of the heater using Energy Saver Cycle. This would require over 100 draw and reheat cycles using our control algorithm. This approach is impractical. The practical approach is to run the control in normal mode and adjust the water temperature to the lowest stable temperature that the ''Energy Saver Cycle'' would reach if the above approach were used.

2. *Definition of lowest stable temperature:* This is the lowest water temperature set point such that when the six draw sequence in step 1 is performed, the control will not adjust the set point higher. In our control logic, the set point is increased if the cold water rises far enough in the tank to cause the upper element to come on. Thus for our control logic, the lowest temperature where the draw sequence in step 1 doesn't cause the upper element to come on is our ''lowest stable temperature''. Other control logic could result in another ''lowest stable temperature'' point. To determine this temperature, the tester would need to know the temperature adjustment logic for the Energy Saver Cycle. He would set the test water temperature to the lowest stable temperature based on that logic. He then would observe the draw quantities and temperatures during the efficiency test to see that a temperature adjustment condition was not present. If a temperature adjustment would have been made the test is invalid and the

test would need to be repeated at a higher temperature.

3. In the current procedure, the mean tank temperature is to be adjusted to 135F. There are three places in the calculation of efficiency where the raw data is adjusted back to 135F to correct for variation between actual and ideal test conditions. Since the Energy Saver Cycle test doesn't run at 135F mean tank temperature, this correction needs to be changed to reflect the new test conditions. This means that the hard coded 135 values in the calculations must be changed to a variable so the actual value can reflect the current test conditions. The most appropriate variable is ''Tsu'' which is the maximum mean tank temperature observed after the sixth draw. In the current procedure, Tsu must be 135F ± 5F and is the logical equivalent of the 135F of the current procedure. Thus the calculation of Qda is changed from

$$Qda = Qd - ((Tstby,2 - Ta,stby,2) - (135 - 67.5))\ UA\ tstby,2\ to$$

$$Qda = Qd - ((Tstby,2 - Ta,stby,2) - (Tsu - 67.5))\ UA\ tstby,2\ and\ QHW,77\ is\ change\ from$$

$$QHW,77 = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (135F - 58F)}{Nr}\ to\ QHW,77 = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (Tsu - 58F)}{Nr}$$

$$Ef\ is\ changed\ from\ Ef = \sum_{i=1}^{6} \frac{Mi\ Cpi\ (Tsu - 58F)}{Qdm}\ to\ Ef = \sum_{i=1}^{6} \frac{Mi\ Cpi(Tsu - 58F)}{Qdm}.$$

Conclusion

New technologies can foster changes that obsolete current practices. American Water Heater's adaptive control has created an energy saving control method that was not anticipated or covered by the current DOE test procedure. This waiver will allow the efficiency benefits of this improved control method to be demonstrated while the test procedures are modified to keep up with technology. This change in control method will reduce water heater energy consumption, and thus its adoption by the industry should be encouraged. This can best be done by granting this waiver and modifying the test procedure. Confidential test data, which demonstrates the energy efficiency benefit, can be made available upon your request.

Respectfully submitted,

Timothy J. Shellenberger,
Sr. Vice President—Product Engineering.

April 26, 2001

Assistant Secretary for Conservation and Renewable Energy United States Department of Energy,
1000 Independence Avenue, SW.,
Washington, DC 20585

To Whom It May Concern: Subject: Application for Interim Waiver.

American Water Heater Company seeks a waiver in the application of the ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' contained in 10 CFR Part 430 Subpart B Appendix E as applied to electric water heater models that have adaptive electronic controls. We are seeking this interim waiver to allow the initial marketing of our new product to claim the benefits of the ''Energy Saving Cycle'' as described in the petition for waiver.

We feel that the interim waiver should be granted because it is likely that the petition for waiver will be granted. The new technology addressed by the petition for waiver yields a legitimate energy savings and improvement in the energy efficiency level of this category of appliance. This improvement serves the interest and goal of the Department of Energy and thus should be supported. Allowing the waiver will encourage other manufacturers to produce similar products creating a general improvement in energy conservation. As new technology is developed, test procedures need to be modified to accommodate the improvement and allow the benefits to be shown to the consumer. These are all good arguments as to why the waiver should be granted and thus the interim waiver be granted.

From an economic point of view, American Water Heater Company has invested significantly in the development of this product and to not be able to present one of its best features would cause loss of sales and discourage further development.

Respectfully submitted,

Timothy Shellenberger,
Sr. Vice President—Product Engineering.

TJS/meh

I, the undersigned, on behalf of American Water Heater Company, hereby certify that a copy of the foregoing Petition for Waiver and Petition for Interim Waiver, has been sent to each of the following known manufacturers of domestically marketed units of the same product type (as listed in Section 322(a) of the Act), as follows:

Rheem Water Heater Division, Rheem Manufacturing Company, 2600 Gunter Park Drive East, Montgomery, AL 36109–1413, Attention: Scott D. Martin

A.0. Smith Water Products Company, Rochelle Park, Suite 200, 600 E. John Carpenter Freeway, Irving, TX 75062–3990, Attention: Ronald Massa

Bradford White Corporation, 200 Lafayette Street, Middleville, MI 49333–9492, Attention: Eric M. Lannes

State Industries, 500 Lindahl Parkway, Ashland City, TN 37015–1234, Attention: John R. Lindahl, Jr.

Lochinvar Corporation, 2005 Elm Hill Pike, Nashville, TN 37210–3807, Attention: Mr. William L. Vallett, Jr.

I further hereby certify that the Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

This the 26th day of April 2001.
Timothy J. Shellenberger.

DOE WAIVER MODEL COMPARISON

AWHC wholesale models electronic	AWHC retail models electronic	AWHC wholesale models standard	AWHC retail models standard	RHEEM (Richmond, Rudd, GE)	A.O. Smith	Bradford White	State Industries (Reliance, Maytag, Sears)	Lochinvar
EE92-40H***D***	EE2H40HD******	E92-40H***D***	E2H40HD******	81XH40D MDH40-2 82R40-2 EXR40-2	PEST-40	M-I-40T1ODS M-II-40T1ODS	PS-40-20RT 9-40-2KRT HE20-40T SSX-40-2LRT 32746	STA040KK-3

DOE WAIVER MODEL COMPARISON—Continued

AWHC wholesale models electronic	AWHC retail models electronic	AWHC wholesale models standard	AWHC retail models standard	RHEEM (Richmond, Rudd, GE)	A.O. Smith	Bradford White	State Industries (Reliance, Maytag, Sears)	Lochinvar
EE122-40H***D***	EE2J40HD******	E122-40H***D***	E2J40HD******	81XH40D MEH40-2	PEST-40	M-I-40T10DS M-II-40T10DS	PX-40-20RT 9-40-2KRT HE29-40T SSX-40-2LRT 32746 12-40-2ART	STA040KK-3
EE122-40H***D***	EE3H40HD******	E93-40H***D***	E3H40HD******	MR40245 MP40245	PEHT-40	M-III-40T10DS	32049 LT-40-2LRT	
EE93-40H***D***	EE3J40HD******	E123-40H***D***	EJ40HD******	MR40245 MP40245	PDHT-40	M-III-40T10DS	32049 LT-40-2LRT	
EE92-40R***D***	EE2H40RD******	EE92-40R***D***	E2H40RD******	RMEMKR 40-2	PES-40	M-III-40S10DS	SSX-40-2LRS 9-40-2KRS	
EE122-40R***D***	EE2J40RD******	E122-40R***D***	E2J40RD******	RMEMKR 40-2 PE40M9A	PES-40	M-II-40S10DS	SSX-40-2LRS 9-40-SK4S 12-40-2ARS	
EE93-40R***D***	EE3H40RD******	E93-40R***D***	E3H40RD***H***	RMEMXR 40-2TI SE40M12A	PEC-40		HE21240S LT 40-2LRS	
EE123-40R***D***	EE3J40RD******	E123-40R***D***	E3J40RD******	RMEMXR 40-2TI SE40M12A	PEC-40		HE21240S LT 40-2LRS	
EE92-50H***D***	EE2H50HD******	E92-50H***D***	E2H50HD******	81X52 D ME52-2 RMEKR 50-2 PE50T9A 82XR52-2 EXR52-2	PEST-52	M-II-50T10DS	PX-52-20RT 9-52-2KRT HE29 50T 32756 SSX-52-2LRT	STA052KK-3
EE122-50H***D***	EE2J50HD******	E122-50H***D***	E2J50HD******	RMEXR 50-2TI SE50T12A		M-II-50T10DS	12-52-ART 32059	
EE93-50H***D***	EE3H50HD******	E93-50H***DC***	E3H50HD***C***	MR50245 MP50245	PEH-52	M-III-50T10DS	HE212 50T LT-52-2LRT 32151	
EE123-50H***D***	EE3J50HD******	E123-50H***DC***	E3J50HD***C***	MR50245 MP50245	PEH-52	M-III-50T10DS	HE212 50T LT-52-2LRT 32151	
EE92-50R***D***	EE2H50RD******	E92-50R***D***	E2H50RD******	RMEMKR 50-2 PE50M9A 82 MXR52-2 EMXR52-2	PES-52	M-II-50S10DS	PX-52-2ORS SSX-52-2LRS 9-52-2KRS HE2950S	
EE122-50R***D***	EE2J50RD******	E122-50R***D***	E2J50RD******	RMEMXR 50-2TI SE50M12A	PEC-52		12-52-2ARS HE212 50S	
EE93-50R***D***	EE3H50RD******	E93-50R***DC***	E3H50RD***C***				LT-52-2LRS	
EE123-50R***D***	EE3J50RD******	E123-50R***DC***	E3J50RD***C***					
EEZ3-50R***D***	EE3Z50RD******	EZ3-50R***DC***	E3Z50RD***C***	MSR50245				
EE92-65H***D***	EE2H65HD******	E92-65H***D***	E2H65HD******	81X66D ME66-2 RMEKR65-2 82XR66-2 EXR66-2 PE65T9A	PEC-66	M-II-65R10DS	HE29 66T 32766 SSX-66-2LRT	STA066KK-3
E122-65H***D***	EE2J65HD******	E122-65H***D***	E2J65HD******				12-66-2ART	
EE93-65H***D***	EE3H65HD******	E93-65H***DC***	E3H65HD***C***					
E123-65H***D***	EE3J65HD******	E123-65H***DC***	E3J65HD***C***	RMEXR 65-2TI	PEH-66	M-III-65R10DS	32069	
EE92-80H***D***	EE2H80HD******	E92-80H***D***	E2H80HD******	RMEKR80-2 82XR80-2 EXR80-2	PES-80		32786 SSX-82-2LRT	STA082KK-3
EE122-80H***D***	EE2J80HD******	E122-80H***D***	E2J80HD******		PEC-80		12-82-2ART	
EE93-80H***D***	EE3H80HD******	E93-80H***DC***	E3H80HD***C***					
EE123-80H***D***	EE3J80HD******	E123-80H***DC***	E3J80HD***C***	RMEXR 80-2TI SE80T12A MR85245 MP85245	PEH-80	M-III-80R10DS	HE212 82T 32089 LT 82-2LRT	

[FR Doc. 02–1747 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–11346; Notice No. 02–06]

RIN 2120–AH38

Lower Deck Service Compartments on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning lower deck service compartments. The proposed amendment would require that two-way voice communication systems between lower deck service compartments and the flightdeck remain available following loss of the normal electrical power generating system. It also would clarify the requirements for seats installed in the lower deck service compartment. 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 25, 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 No. FAA–2002–11346 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–XXXX.'' 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: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2194; facsimile 425–227–1320, e-mail *jayson.claar@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at http://www.faa.gov/avr/armhome.htm or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is ''Harmonization'' and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the

requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry (including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)) proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC suggested one minor editorial change, which has been incorporated into this NPRM.

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this NPRM, the FAA proposes to amend § 25.819, concerning lower deck service compartments on transport category airplanes. A lower deck service compartment as used in § 25.819 is defined as follows: ''A lower deck service compartment is a galley or other service compartment located below the main passenger deck that is accessible during flight by crewmembers. A lavatory is not considered a lower deck service compartment and therefore is not covered by this regulation. Occupancy is not permitted during taxi, takeoff and landing. Also, it is limited to crewmembers only.'' This action has

been identified as a Category 1 (Envelope) project under the Fast Track program.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The standards ensure the safety of occupants of lower deck service compartments that are not certified to be occupied during takeoff and landing. The standards apply design criteria relative to evacuation routes and various items of safety equipment. Many of the regulations that provide evacuation requirements and safety equipment address passenger and flightcrew compartments, but do not include lower deck service compartments.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.819 (Amendment 25–53 (45 FR 41593, June 19, 1980)) is:

Section 25.819 Lower deck service compartments (including galleys).

For airplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant or the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exit to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(c) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the lift if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

The current text of JAR paragraph 25.819 (Change 15, Amendment 25/96/1, October 2000) is:

JAR 25.819 Lower deck service compartments (including galleys).

For aeroplanes with a service compartment located below the main deck, which may be occupied during taxi or flight but not during takeoff or landing, the following apply:

(a) There must be at least two emergency evacuation routes, one at each end of each lower deck service compartment or two having sufficient separation within each compartment, which could be used by each occupant or the lower deck service compartment to rapidly evacuate to the main deck under normal and emergency lighting conditions. The routes must provide for the evacuation of incapacitated persons, with assistance. The use of the evacuation routes may not be dependent on any powered device. The routes must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape routes. In the event the airplane's main power system or compartment main lighting system should fail, emergency illumination for each lower deck service compartment must be automatically provided.

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

(c) There must be an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each required floor level emergency exit to alert occupants of each lower deck service compartment of an emergency situation.

(d) There must be a means, readily detectable by occupants of each lower deck service compartment, that indicates when seat belts should be fastened.

(e) If a public address system is installed in the airplane, speakers must be provided in each lower deck service compartment.

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of JAR 25.785 (d) and must be able to withstand maximum flight loads when occupied.

(g) For each powered lift system installed between a lower deck service compartment and the main deck for the carriage of persons or equipment, or both, the system must meet the following requirements:

(1) Each lift control switch outside the lift, except emergency stop buttons, must be designed to prevent the activation of the lift if the lift door, or the hatch required by paragraph (g)(3) of this section, or both are open.

(2) An emergency stop button, that when activated will immediately stop the lift, must be installed within the lift and at each entrance to the lift.

(3) There must be a hatch capable of being used for evacuating persons from the lift that is openable from inside and outside the lift without tools, with the lift in any position.

What Are the Differences in the Standards and What Do Those Differences Result in?

There are two substantive differences between the standards:

First, the JAR requires that two-way voice communication between the flight deck and each lower deck service compartment remain available following loss of the normal electrical power generating system. Part 25 does not contain such a requirement. This results in system power on those airplanes certificated under the JAR being supplied from the essential bus; whereas, system power on airplanes certificated under part 25 may be supplied from a nonessential bus.

Second, the requirements for the seats located in the lower deck compartment are different between the part 25 and the JAR. Section 25.819(f) of part 25 requires that installed seats must meet the requirements of § 25.785(*c*), while JAR paragraph 25.819(f) requires that installed seats must comply with the requirements of JAR paragraph 25.785(*d*). At the current amendment levels, § 25.785(c) and JAR paragraph 25.785(d) present different requirements, although at one time (prior to Amendment 25–72) they were the same. This apparently is due to a renumbering error that occurred at Amendment 25–72, in which paragraph (c) of § 25.785 became paragraph (d), and there was no associated change to the reference in § 25.819(f). Thus, by referring to § 25.785(*c*), § 25.819(f) currently requires only that seats be ''approved,'' which is not what was intended. The intent is that seat designs must comply with the specific design safety criteria that is described in § 25.785(d) (including a safety belt and either a shoulder harness, an energy absorbing rest, or no injurious objects present in the head strike path, as

appropriate). The correct reference in § 25.819 should be to § 25.785(d).

What, If Any, Are the Differences in the Means of Compliance?

Currently, U.S. manufacturers must comply with the more stringent JAR requirements if they intend to sell their airplanes in Europe. Future certificated airplanes also are expected to meet the existing JAR requirements.

What Is the Proposed Action?

The FAA proposes to amend § 25.819 by incorporating the ''more stringent'' requirements of the current JAR standard. The proposed amendment would require that:

- Two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system.
- Seats installed in the lower deck compartment meet the requirements of § 25.785(d).

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would continue to address the original underlying safety issue. It would ensure the safety of occupants of lower deck service compartments that are not certified to be occupied during takeoff and landing.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

By requiring the more stringent standards of the JAR, the proposed amendment would mandate a higher level of safety than that provided by the currently applicable requirements.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

In current practice, U.S. manufacturers already are complying with the more stringent JAR requirements in order to sell their airplanes in Europe. Future certificated airplanes also are expected to meet the existing JAR requirements, and this proposed rule would simply adopt those same requirements.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considered two alternatives to this proposal:

1. *No change to the existing standards.* The FAA did not select this option because it would mean that the standards would continue to be ''unharmonized'' and manufacturers would continue to meet two different sets of standards when certificating their airplanes.

2. *The JAA could unilaterally adopt the standards of part 25.* The FAA did not seriously consider this option, however, because where the part 25 standards are ''less stringent,'' this could potentially mean adopting a lower level of safety.

The FAA considers the proposal, as contained in this NPRM, to be the most appropriate method of ensuring that the highest level of safety is achieved and fulfilling the objectives of harmonizing the U.S. and European standards.

Who Would Be Affected by the Proposed Change?

Manufacturers of transport category airplanes, as well as airplane modifiers potentially would be affected by the proposed amendment.

Is Existing FAA Advisory Material Adequate?

The FAA does consider that current guidance on this subject is adequate and that additional advisory material is not necessary as a result of the proposed rule.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal has no substantial costs, and that it is not ''a significant regulatory action'' as defined in Executive Order 12866, nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows:

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as ''harmonization.''

This proposal would revise the FAA requirements for lower deck service compartments on transport category airplanes that are not certified to be occupied during takeoff and landing. As explained previously in this preamble, this proposal would revise part 25 to include the following ''more stringent'' requirements of the JAR standards:

- § 25.819(b): two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system; and
- § 25.819(f): seats installed in the lower deck compartment meet the requirements of § 25.785(d), which include safety belt and either a shoulder

harness, and/or energy absorbing rest, and/or elimination of injurious objects in the head strike path.

This proposed rule results from the FAA's acceptance of recommendations made by ARAC. We have concluded that, for the reasons previously discussed in the preamble, the adoption of the proposed requirements in 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

There was consensus within the ARAC members, comprised of representatives of the affected industry, that the requirements of the proposed rule will not impose additional costs on U.S. manufacturers of part 25 airplanes. Concerning the cost impact of complying with the proposed standard, ARAC states there are apparent administrative savings for the relevant airworthiness authorities and indirect savings for the general public. In fact, ARAC believes that the industry would estimate the cost burden being at a neutral level. We have reviewed the cost analysis provided by industry through the ARAC process. A copy is available through the public docket. Based on this analysis, we consider that a full regulatory evaluation is not necessary.

We invite comments with supporting documentation regarding the regulatory evaluation statements based on ARAC's proposal.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category airplane manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport category airplane manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for airplane manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it complies with the Act because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance

with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the 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 § 25.819 by revising paragraphs (b) and (f) to read as follows:

§ 25.819 Lower deck surface compartments (including galleys).

* * * * *

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

* * * * *

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(d), and must be able to withstand maximum flight loads when occupied.

* * * * *

Issued in Renton, Washington, on January 8, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1766 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards; Correction

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects part 542 of a proposed rule published in the **Federal Register** on December 26, 2001, regarding the Minimum Internal Control Standards. This correction remedies formatting changes made to the proposed rule and clarifies with which sections Tribal gaming operations are to comply.

FOR FURTHER INFORMATION CONTACT: Michele F. Mitchell, 202–632–7003.

Correction

In the proposed rule FR Doc. 01–30788, beginning on page 66500 in the issue of December 26, 2001, make the following correction:

1. On page 66506, in the second column, correct § 542.3(a)(1) to read as follows:

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier.*

(1) Tier A gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.20 through 542.23 of this part.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.30 through 542.33 of this part.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.40 through 542.43 of this part.

* * * * *

Dated: January 9, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–882 Filed 1–23–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking that will clarify the application of section 263(a) of the Internal Revenue Code to expenditures incurred in acquiring, creating, or enhancing certain intangible assets or benefits. This document also invites comments from the public regarding these standards. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by March 25, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–125638–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125638–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions

electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax__regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor (202) 622–7180; concerning the proposals, Andrew J. Keyso (202) 927–9397 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The IRS and Treasury Department are reviewing the application of section 263(a) of the Internal Revenue Code to expenditures that result in taxpayers acquiring, creating, or enhancing intangible assets or benefits. This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking.

A fundamental purpose of section 263(a) is to prevent the distortion of taxable income through current deduction of expenditures relating to the production of income in future taxable years. See *Commissioner* v. *Idaho Power Co.,* 418 U.S. 1, 16 (1974). Thus, the Supreme Court has held that expenditures that create or enhance separate and distinct assets or produce certain other future benefits of a significant nature must be capitalized under section 263(a). See *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992); *Commissioner* v. *Lincoln Savings & Loan Ass'n,* 403 U.S. 345 (1971).

The difficulty of translating general capitalization principles into clear, consistent, and administrable standards has been recognized for decades. See *Welch* v. *Helvering,* 290 U.S. 111, 114–15 (1933). Because courts focus on particular facts before them, the results reached by the courts are often difficult to reconcile and, particularly in recent years, have contributed to substantial uncertainty and controversy. The IRS and Treasury Department are concerned that the current level of uncertainty and controversy is neither fair to taxpayers nor consistent with sound and efficient tax administration.

Recently, much of the uncertainty and controversy in the capitalization area has related to expenditures that create or enhance intangible assets or benefits. To clarify the application of section 263(a), the forthcoming notice of proposed rulemaking will describe the specific categories of expenditures incurred in acquiring, creating, or enhancing intangible assets or benefits that taxpayers are required to capitalize. In addition, the forthcoming notice of proposed rulemaking will recognize that many expenditures that create or enhance intangible assets or benefits do not create the type of future benefits for which capitalization under section 263(a) is appropriate, particularly when the administrative and record keeping costs associated with capitalization are weighed against the potential distortion of income.

To reduce the administrative and compliance costs associated with section 263(a), the forthcoming notice of proposed rulemaking is expected to provide safe harbors and simplifying assumptions including a ''one-year rule,'' under which expenditures relating to intangible assets or benefits whose lives are of a relatively short duration are not required to be capitalized, and ''de minimis rules,'' under which certain types of expenditures less than a specified dollar amount are not required to be capitalized. The IRS and Treasury Department are also considering additional administrative relief, for example, by providing a ''regular and recurring rule,'' under which transaction costs incurred in transactions that occur on a regular and recurring basis in the routine operation of a taxpayer's trade or business are not required to be capitalized.

The proposed standards and rules described in this document will not alter the manner in which provisions of the law other than section 263(a) (e.g., sections 195, 263(g), 263(h), or 263A) apply to determine the correct tax treatment of an item. Moreover, these standards and rules will not address the treatment of costs other than those to acquire, create, or enhance intangible assets or benefits, such as costs to repair or improve tangible property. The IRS and Treasury Department are considering separate guidance to address these other costs.

The following discussion describes the specific expenditures to acquire, create, or enhance intangible assets or benefits for which the IRS and Treasury Department expect to require capitalization in the forthcoming notice of proposed rulemaking. The IRS and Treasury Department anticipate that other expenditures to acquire, create, or enhance intangible assets or benefits generally will not be subject to capitalization under section 263(a).

A. Amounts Paid To Acquire Intangible Property

1. Amounts Paid To Acquire Financial Interests

Under the expected regulations, capitalization will be required for an amount paid to purchase, originate, or otherwise acquire a security, option, any other financial interest described in section 197(e)(1), or any evidence of indebtedness. For a discussion of related transaction costs see section C of this document.

For example, a financial institution that acquires portfolios of loans from another person or originates loans to borrowers would be required to capitalize the amounts paid for the portfolios or the amounts loaned to borrowers.

2. Amounts Paid To Acquire Intangible Property From Another Person

Under the expected regulations, capitalization will be required for an amount paid to another person to purchase or otherwise acquire intangible property from that person. For a discussion of related transaction costs see section C of this document.

For example, an amount paid to another person to acquire an amortizable section 197 intangible from that person would be capitalized. Thus, a taxpayer that acquires a customer base from another person would be required to capitalize the amount paid to that person in exchange for the customer base. On the other hand, a taxpayer that incurs costs to create its own customer base through advertising or other expenditures that create customer goodwill would not be required to capitalize such costs under this rule.

B. Amounts Paid To Create or Enhance Certain Intangible Rights or Benefits

1. 12-Month Rule

The IRS and Treasury Department expect to propose a 12-month rule applicable to expenditures paid to create or enhance certain intangible rights or benefits. Under the rule, capitalization under section 263(a) would not be required for an expenditure described in the following paragraphs 2 through 8 unless that expenditure created or enhanced intangible rights or benefits for the taxpayer that extend beyond the earlier of (i) 12 months after the first date on which the taxpayer realizes the rights or benefits attributable to the expenditure, or (ii) the end of the taxable year following the taxable year in which the expenditure is incurred.

The IRS and Treasury Department request comments on how the 12-month rule might apply to expenditures paid to create or enhance rights of indefinite duration and contracts subject to termination provisions. For example, comments are requested on whether costs to create contract rights that are terminable at will without substantial

penalties would not be subject to capitalization as a result of the 12-month rule.

2. Prepaid Items

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount prepaid for goods, services, or other benefits (such as insurance) to be received in the future.

For example, a taxpayer that prepays the premium for a 3-year insurance policy would be required to capitalize such amount under the rule.

Similarly, a calendar year taxpayer that pays its insurance premium on December 1, 2002, for a 12-month policy beginning the following February would be required to capitalize the amount of the expenditure. The 12-month rule would not apply because the benefit attributable to the expenditure would extend beyond the end of the taxable year following the taxable year in which the expenditure was incurred. On the other hand, if the insurance contract had a term beginning on December 15, 2002, the taxpayer could deduct the premium expenditure under the 12-month rule because the benefit neither extends more than 12 months beyond December 15, 2002 (the first date the benefit is realized by the taxpayer) nor beyond the taxable year following the year the expenditure was incurred.

3. Certain Market Entry Payments

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to an organization to obtain or renew a membership or privilege from that organization.

For example, subject to the 12-month rule, the rule would require capitalization of costs to obtain a stock trading privilege, admission to practice medicine at a hospital, and access to the multiple listing service. The rule does not contemplate requiring capitalization for costs to obtain ISO 9000 certification or similar costs.

4. Amounts Paid To Obtain Certain Rights From a Governmental Agency

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to a governmental agency for a trade name, trademark, copyright, license, permit, or other right granted by that governmental agency.

For example, under the rule, a restaurant would be required to capitalize the amount paid to a state to obtain a license to serve alcoholic beverages that is valid indefinitely.

5. Amounts Paid To Obtain or Modify Contract Rights

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount (e.g., $5,000) paid to another person to induce that person to enter into, renew, or renegotiate an agreement that produces contract rights enforceable by the taxpayer, including payments for leases, covenants not to compete, licenses to use intangible property, customer contracts and supplier contracts. The IRS and Treasury Department request comments on whether there are standards other than the standard described above that would be more appropriate for determining whether expenditures related to the creation or enhancement of contractual rights should be capitalized.

Subject to the 12-month rule, this rule would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to enter into a lease. This rule also would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to terminate a lease and enter into a new lease. See, e.g., *U.S. Bancorp* v. *Commissioner,* 111 T.C. 231 (1998). However, this rule would not require a lessee to capitalize an amount paid to a lessor to terminate a lease where the parties do not enter into a new or renegotiated agreement. This rule also would not require a taxpayer to capitalize a payment that does not create enforceable contract rights but, for example, merely creates an expectation that a customer or supplier will maintain its business relationship with the taxpayer. See, e.g., *Van Iderstine Co.* v. *Commissioner,* 261 F.2d 211 (2nd Cir. 1958).

6. Amounts Paid To Terminate Certain Contracts

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid by a lessor to a lessee to induce the lessee to terminate a lease of real or tangible personal property or by a taxpayer to terminate a contract that grants another person the exclusive right to conduct business in a defined geographic area.

For example, under the rule, a lessor that pays a lessee to terminate a lease of real property with a remaining term of 24 months would be required to capitalize such payment. See, e.g., *Peerless Weighing and Vending Machine Corp.* v. *Commissioner,* 52 T.C. 850 (1969). On the other hand, if the lease had a remaining term of 6 months, the 12-month rule would apply, and the taxpayer would not be required to capitalize the termination payment under the rule.

As a further example, where a taxpayer grants another person the exclusive right to develop the taxpayer's motel chain in four states, and the taxpayer later pays that other person to terminate such right at a time when the remaining useful life of the right is 5 years, the taxpayer would be required to capitalize the termination payment under the rule. *See Rodeway Inns of America* v. *Commissioner,* 63 T.C. 414 (1974).

7. Amounts Paid in Connection With Tangible Property Owned by Another

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount paid to facilitate the acquisition, production, or installation of tangible property that is owned by a person other than the taxpayer where the acquisition, production, or installation of the tangible property results in the type of intangible future benefit to the taxpayer for which capitalization is appropriate. This rule would apply even though there is no contractual relationship between the taxpayer and the other person. This rule is intended to require capitalization of expenditures that produce intangible future benefits similar to those that were in issue in *Kauai Terminal Ltd.* v. *Commissioner,* 36 B.T.A. 893 (1937) (expenditure incurred to construct a publicly owned breakwater for the purpose of increasing taxpayer's freight lighterage operation). The IRS and Treasury Department request comments on standards that can be established to ensure that the expenditures described in this rule result in the type of future benefits that are similar to those in *Kauai Terminal* and therefore should be capitalized. The IRS and Treasury Department also request comments on whether safe harbors or dollar thresholds should be used to determine whether capitalization of such expenditures is appropriate under section 263(a).

8. Defense or Perfection of Title to Intangible Property

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts paid to defend or perfect title to intangible property.

For example, under the rule, if a taxpayer and another person both claim title to a particular trademark, the taxpayer must capitalize any amount paid to the other person for relinquishment of such claim. See, e.g., *J.J. Case Company* v. *United States,* 32 F.Supp. 754 (Ct. Cl. 1940).

C. Transaction Costs

The IRS and Treasury Department expect to propose a rule that requires a taxpayer to capitalize certain transaction costs that facilitate the taxpayer's acquisition, creation, or enhancement of intangible assets or benefits described above (regardless of whether a payment described in sections A or B of this document is made). In addition, this rule would require a taxpayer to capitalize transaction costs that facilitate the taxpayer's acquisition, creation, restructuring, or reorganization of a business entity, an applicable asset acquisition within the meaning of section 1060(c), or a transaction involving the acquisition of capital, including a stock issuance, borrowing, or recapitalization. However, this rule would not require capitalization of employee compensation (except for bonuses and commissions that are paid with respect to the transaction), fixed overhead (e.g., rent, utilities and depreciation), or costs that do not exceed a specified dollar amount, such as $5,000. The IRS and Treasury Department request comments on how expenditures should be aggregated for purposes of applying the de minimis exception, whether the de minimis exception should allow a deduction for the threshold amount where the aggregate transaction costs exceed the threshold amount, and whether there are certain expenditures for which the de minimis exception should not apply (e.g., commissions).

The IRS and Treasury Department are considering alternative approaches to minimize uncertainty and to ease the administrative burden of accounting for transaction costs. For example, the rules could allow a deduction for all employee compensation (including bonuses and commissions that are paid with respect to the transaction), be based on whether the transaction is regular or recurring, or follow the financial or regulatory accounting treatment of the transaction. The IRS and Treasury Department request comments on whether the recurring or nonrecurring nature of a transaction is an appropriate consideration in determining whether an expenditure to facilitate the transaction must be capitalized under section 263(a) and, if so, what criteria should be applied in distinguishing between recurring and nonrecurring transactions. In addition, the IRS and Treasury Department request comments on whether a taxpayer's treatment of transaction costs for financial or regulatory accounting purposes should be taken into account when developing simplifying assumptions.

For example, under the rule described above, a taxpayer would be required to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in drafting a 3-year covenant not to compete because such costs facilitated the creation of the covenant not to compete. Similarly, the rule would require a taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in defending a trademark owned by the taxpayer.

Conversely, a taxpayer that originates a loan to a borrower in the course of its lending business would not be required to capitalize amounts paid to secure a credit history and property appraisal to facilitate the loan where the total amount paid with respect to that loan does not exceed the threshold dollar amount. The taxpayer also would not be required to capitalize the amount of salaries paid to employees or overhead costs of the taxpayer's loan origination department.

In addition, the rule would require a corporate taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside counsel to facilitate an acquisition of all of the taxpayer's outstanding stock by an acquirer. See, e.g., *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992). However, the rule would not require capitalization of the portion of officers' salaries that is allocable to time spent by the officers negotiating the acquisition. Cf. *Wells Fargo & Co.* v. *Commissioner,* 224 F.3d 874 (8th Cir. 2000).

The rule also would not require capitalization of post-acquisition integration costs or severance payments made to employees as a result of an acquisition transaction because such costs do not facilitate the acquisition.

D. Other Items on Which Public Comment is Requested

1. Other Costs of Creating, Acquiring or Enhancing Intangible Assets or Benefits That Require Capitalization

The IRS and Treasury Department are considering what general principles of capitalization should be used to identify the costs of acquiring, creating, or enhancing intangible assets or benefits that should be capitalized under section 263(a) but are not described above. The IRS and Treasury Department anticipate that these general principles will apply in rare and unusual circumstances to require capitalization of costs that are similar to those described above. Comments are requested on capitalization principles (for example, a separate and distinct asset test or a significant future benefit test) that can be used to identify other costs that should be capitalized under section 263(a) and the administrability of such principles. The IRS and Treasury Department also request comments on other categories of costs associated with intangible assets or benefits that should be capitalized under section 263(a), but are not described above.

2. Book-Tax Conformity

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which the taxpayer's treatment for financial or regulatory accounting purposes should be taken into account in determining the treatment for federal income tax purposes or to simplify tax reporting.

3. Amortization Periods

Certain intangibles have readily ascertainable useful lives that can be determined with reasonable accuracy, while others do not. The IRS and Treasury Department expect to provide safe harbor recovery periods and methods for certain capitalized expenditures that do not have readily ascertainable useful lives. Comments are requested regarding whether guidance should provide one uniform period or multiple recovery periods and what the recovery periods and methods should be.

4. *De Minimis* Rules

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which it would be appropriate to prescribe de minimis rules that would not require capitalization under section 263(a). If there are such categories or thresholds, comments are requested on how expenditures would be aggregated in applying these de minimis rules.

5. Costs of Software

The IRS and Treasury Department request comments on what rules and principles should be used to distinguish acquired software from developed software and the administrability of

those rules and principles. See Rev. Proc. 2000–50, 2000–2 C.B. 601.

Heather C. Maloy,

Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–1678 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Limited re-opening of the rulemaking record for Occupational Exposure to Tuberculosis (TB).

SUMMARY: The Agency is re-opening the record in the TB rulemaking to allow interested persons to review the National Academy of Sciences/Institute of Medicine (NAS/IOM) report, ''Tuberculosis in the Workplace'' and the comments by the peer reviewers on OSHA's draft final risk assessment. This record re-opening is limited to the draft final risk assessment, the peer review comments on that assessment, and the NAS/IOM report.

DATES: Comments and data must be postmarked no later than March 25, 2002. Comments submitted electronically or by FAX must be submitted by March 25, 2002.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov.* Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the docket office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–2270, FAX (202) 693–1678.

SUPPLEMENTARY INFORMATION: On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). In addition, the Agency provided a draft of its final risk assessment (Ex. 184) for peer review to two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in the use of tuberculin skin testing as a diagnostic for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Public Law 106–113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA is placing it in the record for comment. (Ex. 187)

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1712 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–11358]

RIN 2135–AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and

Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before February 25, 2002.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/oubmit/BlankDSS.asp*. All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC)and the St. Lawrence Seaway Management Corporation (SLSMC)of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System. This requirement would go into effect beginning in the 2002 navigation season. This will be in addition to the existing U.S. and Canadian legal ballast water requirements as well as the tremendous amount of undertakings at the international, national, and regional levels by government and the private sector regarding control of ANS. This rule is one more effort in the commitment of many to find a cost-effective solution that protects the Great Lakes Seaway System from ANS while facilitating commerce.

Specifically, the SLSDC, along with the SLSMC, proposes to amend the Seaway Regulations and Rules in Part 401 of title 33 of the Code of Federal Regulations by adding a new subsection (d) to ''.30, ''quate ballast and proper trim,'' which section would be retitled § llast water and trim.'' This new subsection would require that, to obtain clearance to transit the Seaway, every vessel entering the Seaway must agree to comply with the applicable, existing industry ballast water management practices while operating anywhere within the Great Lakes and the Seaway. This involves two types of vessels and two codes of practice respectively. Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the ''Code of Best Practices for Ballast Water Management'' of the Shipping Federation of Canada dated September 28, 2000. That code reads as follows:

Recognizing that discharge of ballast water from ships is viewed as a principle vector for the introduction and spread of harmful aquatic organisms and pathogens,

Recognizing the role shipowners and vessel operators can play in minimizing the introduction and spread of non-indigenous organisms and protecting the Great Lakes waters,

Considering the current status of technology for the treatment of ballast water and the need to develop standards against which to measure efficiency of management procedures;

Vessels entering into the Great Lakes commit to the following Code of best Practices For Ballast Water Management.

1. To conduct ballast water management whenever practical and at every opportunity even if the vessel is not bound for a port where such a procedure may be required. This process will ensure that residual ballast on board will, to the greatest extent possible, be subjected to these practices. This process will also aid to minimize sediment accumulations in ballast tanks, and where mid-ocean exchange is practiced, subject fresh-water organisms to an extended exposure to salt water.

Where mid-ocean ballast water exchange is the, or one of the management practices used as required by IMO, USCG, Canadian or other regulations, the safety of the ship shall be a top priority and management shall be practiced according to recognized safe practices.

2. To regular inspection of ballast tanks and removal of sediment, if necessary, to at least the level comparable to that required by the vessel's Classification Society in order to conduct a ''close-up'' Enhanced Survey, Ballast Tank Structural and Coating Inspection.

3. To ballast water exchange procedures as provided for in US legislation and approved and enforced through United States Coast Guard Regulations.

4. To record keeping and reporting according to United States Coast Guard Regulations (ballast water report forms)—the master to record all uptake and discharge of ballast water in an appropriate log book; Ballast Water Report Forms to be completed and submitted as per Regulations; inspection and cleaning of ballast tanks to be recorded and records to be made available to inspectors upon request.

5. To provide information and logs to authorized inspectors and regulators for the purposes of verifying the vessel's compliance with this Code of Best Practices.

6. To apply a precautionary approach in the uptake of ballast water by minimizing ballasting operations under the following conditions:

a. In areas identified in connection with toxic algal blooms, outbreaks of known populations of harmful aquatic organisms and pathogens, sewage outfalls and dredging activity.

b. In darkness, when bottom dwelling organisms may rise in the water column.

c. In very shallow water.

d. Where a ship's propellers may stir up sediment.

e. In areas with naturally high levels of suspended sediments, e.g. river mouths, and delta areas, or in locations that have been affected significantly by soil erosion from inland drainage.

f. In areas where harmful aquatic organisms or pathogens are known to occur.

7. To the disposal of accumulated sediments as provided for in the existing IMO Ballast Water Protocols during ocean passages outside International Ballast Water Management Areas or as otherwise approved by Port State Authorities.

8. To foster and support scientific research sampling programs and analysis—Facilitate access to on board sampling and testing of ballast water and sediment including opening of ballast tank covers and safe access to ballast tanks following safety procedures for entering enclosed spaces. Sampling, testing and inspection to be planned and coordinated to fit within vessels' operational programs and minimize any delays.

9. To cooperate and participate in standards development and treatment systems testing and approval processes, including, but not limited to mechanical management and treatment systems, and pesticide management systems as well as improved techniques for ballast water exchange and their scientific assessment.

10. To strive toward global, integrated ballast water management strategies in conformity with internationally agreed principles that respect national and regional aquatic ecosystems. This Code of Best Practices is endorsed by the undersigned and represents our common goal to attain the highest standards of safe ballast water management to minimize the introduction

and spread of aquatic nuisance species in the Great Lakes.

These Federation practices already cover approximately 95% of the commercial oceangoing vessels using the Seaway.

Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the ''Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping'' of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001. That code reads as follows:

Owners and operators of vessels that trade within the Great Lakes and the St. Lawrence Waterway and do not go out beyond the Exclusive Economic Zone (EEZ) recognize their role in reducing the risk of transfer of Aquatic Nuisance Species. Introduction of Aquatic Nuisance Species into the Great Lakes has taken place by ships operating outside the EEZ and has caused ecosystem and economic damage. The co-sponsors of this voluntary plan will take management action to reduce the risk of transferring these species. This plan will apply to U.S and Canadian vessels that operate entirely within the Great Lakes and St. Lawrence Waterway. Design, construction, and structural criteria on some vessels may require consideration and variance from this management practice; however, efforts will be made to comply wherever possible.

For All Vessels Operating Totally Within the Great Lakes and St. Lawrence Waterway System.

None of these practices will be undertaken if the master feels the safety of crew or ship will be compromised

1. Vessel operators will assist in developing programs such as the Duluth-Superior Harbor and Alpena, Michigan Ruffe Voluntary Ballast Management Programs should U.S. Fish and Wildlife Service or an equivalent Canadian authority determine a nuisance species has established niche communities in a specific harbor, providing that these programs will result in substantial prevention of the spread of the species or harmful organism via ballast water.

2. Each vessel will perform annual inspections to assess sediment accumulations. Removal of sediment, if necessary, will be carried out. Records of these actions will be kept onboard the ship.

3. Each company will develop sediment removal policies and plans.

4. When practical and safe, vessels will take only the minimum amount of ballast required to safely depart the dock and will complete ballasting in deeper water. Records of all ballasting operations will be kept onboard the ship.

5. Cooperation will be provided, as mutually agreed upon, for scientific research into sampling and analysis programs that will not interfere with normal and safe ship operations.

6. Cooperation will be provided, as mutually agreed upon, for developing and testing ballast water treatment systems.

7. Cooperation will be provided toward harmonization of regional ballast water practices.

These rules already cover nearly 100% of the commercial non-oceangoing vessels (lakers) using the Seaway.

The texts of both of these codes would be printed in the ''Seaway Handbook,'' which is distributed to Seaway users by the SLSMC and the SLSDC and is also posted on the joint ''Great Lakes St. Lawrence Seaway System Web'' site, which can be found at *http://www.greatlakes-seaway.com/en/pdf/handbook.pdf*. If promulgated, the SLSDC and the SLSMC will assess the effectiveness of this regulation after the 2002 Seaway navigation season.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321,*et seq.*) because it is not a major federal action significantly affecting the quality of human environment. The environmental considerations applicable to the basic substance of this proposed regulation are essentially discussed in the U.S. Coast Guard's Environmental Assessment for its May 17, 1999, ''Implementation of the National Invasive Species Act of 1996'' rulemaking (64 FR 26672).

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. § 401.30 would be amended by revising the heading and by adding a new paragraph (d) to read as follows:

§ 401.30 Ballast water and trim.

* * * * *

(d) Beginning in the 2002 navigation season, to obtain clearance to transit the Seaway:

(1) Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the ''Code of Best Practices for Ballast Water Management'' of the Shipping Federation of Canada dated September 28, 2000, while operating anywhere within the Great Lakes and the Seaway; and

(2) Every other vessel entering the Seaway that operates within the Great

Lakes and the Seaway must agree to comply with the ''Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping'' of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001, while operating anywhere within the Great Lakes and the Seaway.

Issued at Washington, D.C. on January 18, 2002.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–1752 Filed 1–18–02; 2:26 pm]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7131–1]

RIN 2060–AJ80

Relaxation of Summer Gasoline Volatility Standard for the Denver/Boulder Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing approval of the State of Colorado's request to relax the Federal Reid Vapor Pressure (''RVP'') gasoline standard that applies to gasoline that is supplied to the Denver/Boulder area (hereafter ''Denver area'') from June 1st to September 15th (the ozone control season) of each year. This action proposes to amend our regulations to change the summertime RVP standard for the Denver area from 7.8 pounds per square inch (''psi'') to 9.0 psi. EPA has determined that this change to our federal RVP regulations would be consistent with criteria EPA has enumerated for making such changes: that the State has demonstrated it has sufficient alternative programs to attain and maintain the National Ambient Air Quality Standards for ozone; and that amendments are appropriate to avoid adverse local economic impacts.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are approving this amendment to the federal RVP regulations as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 25, 2002.

ADDRESSES: Any person wishing to submit comments should submit a copy to both dockets listed below, and if possible, should also submit a copy to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–26 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO–RVP–02 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202–2466, and is available for inspection during normal business hours. Interested persons wishing to examine the documents in docket number CO–RVP–02 should contact Kerri Fiedler at (303) 312–6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov.

SUPPLEMENTARY INFORMATION: This document concerns the amendment to EPA's regulations governing the RVP of gasoline supplied to the Denver/Boulder area of Colorado. For further information, please see the information provided in the direct final rule of the same title which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 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, 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 entitlement, 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.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any 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 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. Today's rule merely permanently continues the current relaxation of the Federal RVP standard for gasoline in the Denver/Boulder area, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule relaxes an existing standard and affects only the gasoline industry.

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As previously discussed, the Denver/Boulder area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. The revised maintenance plan we approved on September 11, 2001 shows maintenance of the 1-hour ozone NAAQS for the entire maintenance time period of 1993 through 2013 with the 9.0 psi standard.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to incremental evaporative emissions, or to ozone caused by incremental evaporative emissions, resulting from a relaxed RVP standard of 9.0 psi for gasoline in the Denver/Boulder area.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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 proposed 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 proposed rule merely affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. Thus, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

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 OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. 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.

For purposes of assessing the impacts of today's proposed rule on small entities, a small entity is defined as:

(1) A small business, including its affiliates: a refinery that has a maximum of 1500 employees—NAICS code 324110, a bulk gasoline station or terminal or gasoline wholesaler that has a maximum of 100 employees—NAICS codes 422710 and 422720, respectively; a gasoline pipeline transporter that has a maximum of 1,500 employees—NAICS code 486910; a gasoline station that has a maximum of $6.5 million annual receipts—NAICS code 447190; and a gasoline station with a convenience store that has a maximum of $20 million annual receipts—NAICS code 447110 (see 13 CFR 121.201);

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of

the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule relaxes an existing standard and affects only the gasoline industry. It relaxes the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. We have therefore concluded that today's proposed rule will relieve regulatory burden for any small entity.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule affects the level of the Federal RVP standard applicable to gasoline supplied to the Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area. Thus, Executive Order 13175 does not apply to this proposed rule.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Electronic Copies of Rulemaking

For more information about this proposed rule and more details as described in the preamble to the direct final rule see a copy of this rule on the Internet at *http://www.epa.gov/otaq* under the title: *Relaxation of Summer Gasoline Volatility Standard for Denver/Boulder Area*

Statutory Authority

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 15, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–1494 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens; 1626 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR part 1626. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1626 Negotiated Rulemaking Working Group will meet on January 28–29, 2002. The meeting will begin at 9:00 a.m. on January 28, 2002. It is anticipated that the meeting will end by 5:00 p.m. on January 29, 2002.

ADDRESSES: The meeting will be held in the First Floor Conference Room at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., N.E., 11th Floor, Washington, DC, 20002; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its alien representation regulations at 45 CFR part 1626. In September 2001, LSC solicited expressions of interest in participation in a negotiated rulemaking working group. (66 FR 46977, September 10, 2001). The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov*.

Dated: January 18, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 02–1808 Filed 1–22–02; 10:37 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA–2001–11048]

RIN 2127–AI68

Light Truck Average Fuel Economy Standard, Model Year 2004

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish the corporate average fuel economy standard for light trucks manufactured in model year (MY) 2004. The establishment of the standard is required by statute. The proposed standard is 20.7 mpg.

DATES: Comments must be received on or before February 25, 2002. The comment period has been shortened due to a statutory deadline.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Office of Planning and Consumer Programs, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov.* For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Title V was amended from time to time, and was codified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall, at least eighteen months prior to the beginning of each model year, prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for that model year. That section also states that ''[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that, in determining the maximum feasible average fuel economy level, we shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Using this authority, we have set light truck CAFE standards through MY 2003. See 49 CFR 533.5(a). The standard for MY 2003 is 20.7 miles per gallon (mpg)(66 FR 17513; April 12, 2001).

From 1995 through mid-December 2001, the standards-setting process for light truck CAFE standards was affected by restrictions imposed in the Department of Transportation's annual Appropriations Acts.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Public Law 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM), limited to MY 1998, that proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). We adopted this 20.7 mpg-standard in a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations . . . prescribing corporate average fuel economy standards for automobiles . . . in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for MY 1999. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards at a level other than the standard set for MY 1998. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

Because the same limitation on the setting for CAFE standards was included in the appropriations acts for FYs 1998–2001, we followed that same procedure during those fiscal years and did not issue any NPRMs in the series of rulemakings we conducted to establish the light truck fuel economy standards for MYs 2000–2003. The agency concluded in those rulemakings, as it had when setting the MY 1999 standard, that the restrictions contained in the appropriations acts prevented us from issuing any standards other than the standard set for the prior model year. We also determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

The Department of Transportation and Related Agencies Appropriations Act for FY 2001 was enacted on October 23, 2000. Public Law 106–346. This law provided appropriations for the Department of Transportation for FY 2001, and is the law under which we issued the light truck CAFE standard for MY 2003. While Section 320 of that Act contains a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the Conference Committee Report for that Act directed the National Academy of Sciences (NAS) to conduct a study to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

The NAS submitted its report to the Department of Transportation on July 30, 2001. The report contains a number of key findings and recommendations. The Department of Transportation is in the process of evaluating and responding to the issues raised by the report. With regard to this proposal, however, it is important to note that the NAS also found that any policy change that is implemented in too short a period of time has the potential to adversely affect manufacturers, their suppliers, their employees, and consumers.

The series of restrictions on appropriations ended with the enactment of the Department of Transportation and Related Agencies Appropriations Act for FY 2002 on December 18, 2001. Public Law 107–87. The FY 2002 Appropriations Act, unlike the appropriations acts for fiscal years 1996–2001, does not prevent NHTSA from expending funds to prepare, propose or promulgate fuel economy standards. Accordingly, for the first time since 1995, NHTSA is authorized to expend funds to establish fuel economy standards for non-passenger automobiles at the maximum feasible average fuel economy level in accordance with section 32902(a) of Chapter 329.

The availability of these funds does not, as a practical matter, translate into an effective ability to conduct its customary level of analysis of potential MY 2004 light truck fuel economy standards. NHTSA cannot delay the beginning of rulemaking to establish the

MY 2004 standard to provide time for that analysis. As noted above, NHTSA must establish the fuel economy standard for a given model year at least 18 months before that model year begins. In the case of MY 2004, this statutory deadline requires NHTSA to issue a fuel economy standard on or before April 1, 2002. As the agency was unable, from 1995 until mid-December 2001, to spend any funds for the collection and analysis of data relating to CAFE levels, it has not been able to lay the factual or analytical foundation necessary to develop a proposed standard other than one at 20.7 mpg, the level of the MY 1996–2003 standards.

II. Agency Proposal

The agency is proposing to establish the MY 2004 fuel economy standard for all light trucks manufactured by a manufacturer at 20.7 mpg, the same level previously adopted for MY 2003. The agency's proposal reflects the absence of any current information or analysis regarding the impact of any change in CAFE standards and the capabilities of manufacturers.

The agency is inviting comments, however, on the maximum feasible level of average fuel economy, including comments as to whether motor vehicle manufacturers can, with the limited leadtime available and product plans essentially established, achieve a level higher than 20.7 mpg in MY 2004. In establishing CAFE standards, NHTSA is commanded by section 32902(f) to determine the maximum feasible average fuel economy after considering technological feasibility, economic practicability, the effect of other Government motor vehicle standards on fuel economy, and the need of the United States to conserve energy. NHTSA has traditionally performed the analysis required by section 32902(f) through the publication of requests for information (similar to the one published concurrently with this notice) seeking data from manufacturers and other interested parties regarding technical capabilities, future product plans, anticipated model mix, impact of safety and emissions regulations, the economic impacts of changes in fuel economy standard, the need of the nation to conserve energy and other factors. Once these data are obtained, the agency traditionally assesses the accuracy of manufacturer projections, the likelihood that certain technical innovations may increase fuel efficiency, the potential impact of consumer demand on the composition of manufacturer fleets, the capability of different manufacturers to attain a minimum levels of fuel efficiency, and the effects of weight and other penalties imposed by changes in safety and emissions standards. While this process must be considerably compressed due to the limited time remaining for setting the MY 2004 standard, we will nonetheless consider all comments, including comments with data and analysis suggesting a level higher or lower than 20.7 mpg.

III. Impact Analyses

A. Economic Impacts

This proposal rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Although our proposed standard for MY 2004 does not differ from the fuel economy standards for the preceding model years, we are treating this rule as ''economically significant'' under Executive Order 12866 and ''major'' under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996. This proposal is also considered significant under the Department's regulatory policies and procedures.

As noted above, the agency has been operating under a restriction on the use of appropriations for the last six fiscal years. The restriction has prevented the agency from gathering and analyzing data relating to fuel economy capabilities and the costs and benefits of improving the level of fuel economy. Particularly since that restriction was lifted only very recently, on December 18, 2001, the agency has been unable to prepare an economic analysis for this rulemaking.

B. Environmental Impacts

C. Energy Impacts

NHTSA is not proposing to change the light truck CAFE standard for the 2004 model year. Assuming that this proposal is adopted in a final rule, this action will not have ''a significant adverse effect on the supply, distribution, or use of energy,'' as defined by Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. At this point, therefore, this action is not a ''significant energy action'' under Executive Order 13211 and no ''Statement of Energy Effects'' is required.

D. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the proposed rule would be classified as a ''small business'' under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this proposal regarding the corporate average fuel economy of light trucks would not have a significant economic impact on a substantial number of small entities.

E. Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This proposal would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 more than $100 million annually. For the same reasons discussed in the section above on economic impacts, the agency has been unable to prepare an assessment.

G. Paperwork Reduction Act

There are no information collection requirements in this proposal.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the proposal clearly stated?

—Does the proposal contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the proposal easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting a fuel economy standard for light trucks.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [1] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, i.e., ones regarding the maximum feasible level of corporate average fuel economy for MY 2004 light trucks. Therefore, this proposal is not based on any voluntary consensus standards.

[1] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

L. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this proposal to the Department of Energy for review. That Department did not make any comments that we have not responded to.

IV. Comments

Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, we try to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed,

stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

(2) On that page, click on ''search.''

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. The ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

V. Conclusion

Based on the foregoing, we are proposing to establish the combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2004 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

PART 533—[AMENDED]

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7
2003	20.7
2004	20.7

* * * * *

Issued on: January 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–1675 Filed 1–18–02; 12:25 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 67, No. 16
Thursday, January 24, 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

Food Safety and Inspection Service

[Docket No. 01–020N]

Applied Epidemiology and Other Vital Public Health Tools To Inform Food Safety Actions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a two-day public meeting on the use of epidemiological data, principles, and techniques, and other public health tools to help the Agency achieve its public health goals. The Agency will describe its use of epidemiology and other public health tools in outbreak investigations and in in-plant environmental assessments, present hypothetical scenarios, and invite discussion and comment on its approach. This meeting is intended to be the first in a series of meetings that will aid FSIS in developing a framework for how the Agency will conduct public health investigations, and how it will integrate the scientific principles of applied epidemiology into its food safety activities. The long-term goal is to arrive at a consensus on how and when these tools should be used.

DATES: The public meeting is scheduled for January 29 and 30, 2002. The meeting will be from 8:30 a.m. to approximately 4 p.m. each day. A tentative agenda is available in the FSIS Docket Room and on the FSIS website at *http://fsis.usda.gov.*

ADDRESSES: The meeting will be held at the Holiday Inn Select Atlanta/Decatur, 130 Clairemont Avenue in Decatur, GA; telephone (404) 371–0204. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Clerk, Docket #01–020N, 102 Cotton Annex, Washington, DC 20250–3700. All comments and the official transcript, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gioglio at (202) 205–0256. Registration for the meeting will be on-site. If a sign language interpreter or other special accommodation is necessary, contact Ms. Mary Harris as soon as possible at (202) 690–6497.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic or foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

In recent years, the Agency has placed increased emphasis on its public health protection role. Throughout the 1990's, the Agency's most important goal was an improved food safety inspection system, exemplified by the Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) regulations which are now fully implemented. FSIS has consistently sought to enhance the public health by minimizing foodborne illness from meat, poultry, and egg products. The Agency has worked toward achieving this goal by implementing measures intended to reduce pathogens on raw products, by strengthening relationships with public health agencies at the Federal and State levels, by making food safety information and training available to people at every point in the food production and marketing chain, and by promoting international cooperation in food safety.

The Agency's Strategic Plan for 2000–2005 proposes that FSIS continue to focus its operations and resources on food safety and continue to strengthen the scientific basis for its regulatory activities and initiatives.

FSIS would like the views, suggestions, and comments of all of its food safety constituencies, including the general public, on the approaches it has been using, and on how it should continue to use applied epidemiology and other public health tools to achieve its mission. For many years, FSIS has used epidemiology and other methods as tools in tracking the source of outbreaks of foodborne illness. On several occasions, FSIS has based a recall request or a regulatory action on epidemiological data that indicated that product from a particular establishment is adulterated, but without a positive laboratory finding. Recent improvements in the technology of outbreak investigation and genetic fingerprinting of pathogens from persons and food products have resulted in significant changes. It is now possible to identify otherwise unrecognized outbreaks and to provide substantive evidence to link products to illnesses. The Agency has begun using the techniques of epidemiology during in-plant assessments to help identify the source of on-going plant contamination.

Public Meeting

At the public meeting, FSIS officials will discuss the use of applied epidemiology and other public health tools in foodborne illness outbreak investigations and their application to in-plant assessments and regulatory decisions, including whether to request a recall of FSIS regulated products. The first day of the meeting will focus on foodborne illness outbreaks; the second day will focus on in-plant applications of epidemiological principles and approaches and other tools. During the meeting, FSIS officials will discuss the Agency's public health approach to foodborne illness outbreaks and in-plant assessments. FSIS officials will discuss the role of epidemiology and other public health tools in outbreak investigations and recall decisions, and the use of epidemiological data, principles, and investigative and other techniques in conducting in-plant environmental assessments to prevent foodborne illness. The Agency also will present its current thinking on approaches that integrate epidemiological principles and techniques into inspection methods and activities. Hypothetical scenarios based on recent cases of foodborne illnesses and in-plant contamination will be presented by Agency personnel to discussion panels of food safety experts.

Finally, the Agency will open the discussion to include, and solicit comment from, the attendees. FSIS believes that this type of public process will assist it in achieving its goals and will enhance the understanding of the public health community.

Additional Public Information

Public awareness of all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and others that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–1750 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–044N]

Codex Alimentarius Commission: Fifth Session of the Codex Committee on Milk and Milk Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and the Department of Health and Human Services (DHHS), are sponsoring a public meeting on March 20, 2002, to review the technical content of the agenda item documents and receive comments on all issues coming before the Fifth Session of the Codex Committee on Milk and Milk Products, which will be held in Wellington, New Zealand, April 2–8, 2002.

DATES: The public meeting is scheduled for Wednesday, March 20, 2002, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3501, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250.

To receive copies of documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Room, U.S. Department of Agriculture, FSIS, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also become accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/Codex.* Send comments, in triplicate, to the FSIS Docket Room and reference Docket #01–044N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex; Telephone: (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration and correctly labeled.

The Codex Committee on Milk and Milk Products was established to elaborate codes and standards for Milk and Milk Products. The Government of New Zealand hosts this committee and will chair the committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex committees

2. Review of the Proposed Draft and Draft Revised Standards: Cream; Fermented Milk Products; Dairy Spreads; Processed Cheese; Individual Cheeses; and Whey Powders

3. Proposed Standards for Products in Which Milkfat is Substituted for by Vegetable Fat

4. Model Export Certificate for Milk Products

5. Review of Proposals for New Standards for ''Parmesan'' and ''Cheese Specialities''

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 18, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–1749 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on March 7, 2002 at Bureau of Land Management, 355 Hemsted Drive, Redding, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held March 7, 2002.

ADDRESSES: The meeting will be held in the Conference Room at the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 17, 2002.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 02–1715 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forest's Eastern Idaho Resource Advisory Committee will meet Wednesday, February 13, 2002 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on February 13, 2002 from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Quality Inn, 850 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on February 13, begins at 10 am, at the Quality Inn, 850 Lindsay Boulevard, Idaho Falls, Idaho. Agenda topics will include FACA overview, Charter overview, Process for project identification/recommendation, election of Chairperson, operating guidelines, and establishment of future meeting schedule.

Dated: January 26, 2002.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 02–1716 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–11–M

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in Washington, DC.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On Thursday, February 7, 2002, the Council will hold a Business Meeting from 9:30 a.m.–10:30 a.m. Eastern Standard Time (EST) to discuss the final recommendation of the Council for a restructured and rationalized national intercity rail passenger system. Following the Business Meeting, the Council will hold a press conference from 10:30 a.m. to 12:30 p.m.

During its most recent Council meeting, held on January 11, 2002, the Council discussed four options for restructuring Amtrak. A majority of the Council (eight in favor and one opposed) voted to approve the basic elements for a restructuring plan. Under the Council's proposal, the National Railroad Passenger Corporation (NRPC), which has been commonly referred to as Amtrak, would be reconfigured as a small federal program management agency that would control the passenger rail franchise rights, define funding requirements for train operations and infrastructure needs, secure funding from the Congress, and oversee the performance of the system. The reorganization of the NRPC would be completed, in principal part, by putting its train operations into one subsidiary and its real property infrastructure into another. Once the reorganization is in place, the NRPC could introduce competition into the national rail passenger system by permitting other train operating companies, along with Amtrak, to compete for the right to operate a particular route or routes under contract. The NRPC could also exercise its franchise authority to operate passenger trains at the request of a state or an interstate compact.

On November 9, 2001, the Amtrak Reform Council approved a resolution finding that Amtrak would not achieve operational self-sufficiency by December 2, 2002, as required by the Amtrak Reform and Accountability Act of 1997. The Council's finding started a 90-day clock in which the Council must submit an action plan for to Congress.

DATES: The Business Meeting will be held on Thursday, February 7, 2002, from 9:30 a.m.–10:30 a.m. EST, followed by a press conference from 10:30 a.m. to 12:30 p.m. The event is open to the public.

ADDRESSES: The Business Meeting will take place in the Ballroom in the Phoenix Park Hotel at 580 N. Capitol Street, NW, Washington, DC 20001. The nearest Metro stop is Union Station on the Red Line. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's Finding Resolution, the ARC's Proposed Four Options for Restructuring Amtrak, the ARC's two Annual Reports, information about ARC Council Members and staff, and more, you can also visit the Council's Web site at *www.amtrakreformcouncil.gov.*

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the

Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—January 15, 2002.

Thomas A. Till,

Executive Director.

[FR Doc. 02–1695 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–846)

Notice of Court Decision: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 27, 2001, the United States Court of International Trade issued a final judgment with respect to the litigation in Nippon Steel Corp. v. United States, Consol. Ct. No. 99–08–00466. Slip Op. 01–152 (''Nippon IV''). This case arises out of the Department's Notice of Final Determination of Sales at Less Than Fair Value: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999). The final judgment in this case was not in harmony with the Department's May, 1999, Final Determination.

DATES: The effective date of this notice is January 6, 2002, which is 10 days from the date on which the judgment of the Court was issued.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department. of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The decision of the Court of International Trade in Nippon IV is that Court's final decision in a series of decisions addressing issues related to the antidumping margin assigned to Nippon Steel Corporation (''Nippon'') in the above–referenced Final Determination.

In Nippon Steel Corp. v. United States (''Nippon I''), 118 F. Supp. 2d 1366 (CIT 2000), that Court (1) remanded for Commerce to determine whether, as to weight conversion factors, Nippon acted to the best of its ability within the meaning of 19 U.S.C. § 1677e(b); (2) ordered Commerce to issue a policy statement on ex–parte memoranda in accordance with the opinion; and (3) upheld the Department on all other challenged aspects relating to Nippon. In Nippon Steel Corp. v. United States (''Nippon II''), 146 F. Supp. 2d 835 (CIT 2001), the Court (1) found that a revised policy statement as to ex–parte memoranda, 66 FR 16906 (March 28, 2001), complied with the Court's order in Nippon I; but (2) held that Commerce had erred in finding that Nippon did not act to the best of its ability with respect to providing requested weight conversion factors, and that, accordingly, Nippon's failure to timely provide these factors did not warrant an adverse inference in the selection of facts available for the affected sales. Thus, the Nippon II Court remanded for Commerce to recalculate Nippon's margin without using an adverse assumption in that respect. In Nippon Steel Corp. v. United States (''Nippon III''), Slip Op. 01–122 (CIT, October 12, 2001), the Court (1) rejected Nippon's claims that the Department's remand results methodology impermissibly took a different approach from that used in the investigation, but (2) rejected the Department's selection of the non–adverse facts available associated with the missing weight conversion factors, and remanded again for the Department to devise a new approach to the determination of neutral facts available.

In Nippon IV, the Court rejected the ''application'' of the Department's new approach, taking no position on whether it was reasonable as a general matter, and ordered the Department to use Nippon's untimely submitted (proprietary) weight conversion factor. Slip Op. 01–152, at 6–7. As mentioned above, this decision was issued as a final judgement in this case.

In its decision in Timken Co. v. United States, 893 F.2d 337, 341 (Fed. Cir. 1990) (''Timken''), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in Nippon IV on December 27, 2001, constitutes a final decision of that court which is ''not in harmony'' with the Department's final determination of sales at less than fair value. This notice is published in fulfillment of the publication requirements of Timken.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a ''conclusive'' court decision.

January 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1790 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–504

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China

ACTION: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to a request from Shanghai New Star Im/Ex Co., Ltd. (New Star). The review covers the period August 1, 2000 through January 31, 2001.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. (See the ''Preliminary Results of Review'' section of this notice.)

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Javier Barrientos, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312 or (202) 482–2243, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions

effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

The Department published in the Federal Register an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). On February 28, 2001 the Department received, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, a timely request from New Star to conduct a new shipper review of the antidumping duty order on petroleum wax candles from the PRC. On March 28, 2001 the Department published its initiation of this new shipper review for the period August 1, 2000 through January 31, 2001 (66 FR 16903). On August 27, 2001 the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until January 15, 2002 (66 FR 45005).

This new shipper request was made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted–average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non–market–economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. See section 351.214(b)(2) of the Department's regulations.

New Star submitted the information and certifications establishing the effective date on which this company first shipped and entered petroleum wax candles for consumption in the United States, the volume of its shipment, and the date of first sale to an unaffiliated customer in the United States. New Star certified that it was not affiliated with any company which exported petroleum wax candles from the PRC during the POI. In addition, New Star certified that its export activities are not controlled by the central government.

Scope of Review

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the questionnaire responses of both New Star and its U.S. importer, Peak Candles, LLC (Peak Candle). We used standard verification procedures, including on–site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

New Shipper Status

Based on the questionnaire responses received from New Star and Peak Candle, and our verifications thereof, we preliminarily determine that New Star has met the requirements to qualify as a new shipper during the POR. We have determined that the company made its first sale or shipment of subject merchandise to the United States during the POR, that this sale was a *bona fide* sale, and that this company was not affiliated with any exporter or producer that previously shipped to the United States during the POI.

Separate Rates

New Star has requested a separate, company–specific rate. In its questionnaire responses, the company states that it is an independent legal entity.

To establish whether a company operating in a non–market economy (NME) country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company–specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record indicates that New Star's export activities are not controlled by the government. New Star

submitted evidence of its legal right to set prices independently of all government oversight. The business license of the company indicates that it is permitted to engage in the exportation of candles. We find no evidence of *de jure* government control restricting this company's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately–owned companies, such as New Star, and that control over these enterprises rests with the enterprises themselves. The Administrative Regulations of the People's Republic of China Governing the Registration of Enterprises as Legal Persons, issued on June 3, 1988 by the State Council of the PRC, the Company Law of the People's Republic of China, issued on December 29, 1993 by the National People's Congress, the Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons, promulgated by the State Administration for Industry and Commerce on June 13, 1988, and the General Principles of the Civil Law of the People's Republic of China, effective on January 1, 1987, all placed on the record of this review, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045 (November 6, 1995) (Manganese Metal). At verification, we saw that the business license for New Star was granted in accordance with these laws. Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to this firm.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information provided in the questionnaire responses, and reviewed at verification, indicates that the management of New Star is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. New Star has stated that its management is selected by its board of directors and/or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondent concerning purchases of subject merchandise from other suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that New Star is eligible for a separate rate for purposes of this review.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at prices below NV, we compared the United States prices to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For New Star, we based United States price on EP, in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. See, the memorandum entitled Analysis of the Relationship and Treatment of Sale between Shanghai New Star Im/Ex Co., Ltd. (New Star) and Peak Candles, LLC (Peak Candle), January 15, 2002. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight, foreign inland insurance, and international freight expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors–of–production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Review of Petroleum Wax Candles from the People's Republic of China, January 15, 2002 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with numerous other cases involving the PRC, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. See the November 27, 2001 memo from the Office of Policy regarding surrogate country selection for this review and the Factor Values Memo. We valued the factors of production using publicly available information from India. We adjusted the Indian input prices by adding freight expenses to reflect delivered prices. At verification we found that New Star had not reported in its questionnaire responses factor information for several factors, including water, scent, additive and plaster. Because these factors are a relatively minor part of the production process for candles, we gathered information at verification to use as the basis for including these factors in the calculation of NV. Thus, the information gathered at verification for these factors is being used as facts available (FA) in accordance with section 776(a) of the Act and section 351.308 of the Department's regulations.

We valued the factors of production as follows:

To value petroleum wax, we used the average Indian price for paraffin wax derived from rates published in Chemical Weekly for the second quarter 2000 (IIQ00), as found in petitioner's August 17, 2001 Surrogate Value Submission in the 1999–2000 administrative review of Sulfanilic Acid from the PRC. We selected the price quotes from the IIQ00 because that period represents the most recent complete quarter available from that submission. This price was adjusted on a tax–exclusive basis to account for the

Indian excise tax of 16 percent and has been inflated through the POR.

To value wicks, we used the average Indian import price for HTS number 5908 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value color, we used the average Indian import price for HTS numbers 3204.1121 and 3204.1129 from the February 2001 issue of the Monthly Statistics, which includes data for the period April 2000–February 2001. These HTS numbers are for red and pink dyes, which were the colors used by New Star's producer. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value additive (stearic acid), we used the average Indian import price for HTS number 2915.7003 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value scent, we used the average Indian import price for HTS number 3302.9002 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value plaster, we used the average Indian import price for HTS number 2520.2001 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of ''Steam Coal for Industry'' and ''Electricity for Industry,'' published in the International Energy Agency's publication, Energy Prices and Taxes, First Quarter, 2000. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the company under review, we adjusted these factor values to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data from the April 2000 through February 2001 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics). We did not adjust these prices to reflect inflation to the candles processing season during the POR because most months from this period overlap with the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier of the packing materials and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the distance between the domestic supplier and the factory. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) (Roofing Nails).

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used information reported in the January, 1997 Reserve Bank of India Bulletin, ''Statement 1 – Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group–wise'' of that report for the Indian metals and chemicals (and products thereof) industries.

For labor, we used the PRC regression–based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001. See http://ia.ita.doc.gov/wages/. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2000, International Labour Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

We valued movement expenses as follows:

To value truck freight expenses, we used the average of seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the IFS.

To value inland insurance, we used data available on our website's index of factor values at http://ia.ita.doc.gov/factorv/prc/insuranc.htm. The published rate of Rs. 133.75/mt was inflated through the POR and converted to a per kilogram rate.

To value domestic ocean freight, we used data available on our website's index of factor values at http://ia.ita.doc.gov/factorv/prc/freight.htm. The published rate of $0.17/kg was inflated through the POR.

To value international ocean freight, we used freight quotes from the first administrative and new shipper reviews of crawfish tail meat from the PRC (See Memorandum to the File from Mike Strollo to Maureen Flannery: Ocean Freight Rates for the New Shipper and Administrative Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, dated September 29, 1999). These quotes were the most contemporaneous to the POR that we were able to locate. For additional values, we used freight quotes from Maersk/Sea Land and Transoceanic Shipping Co., Inc. See Memorandum to the File from Scott Lindsay to Maureen Flannery: Ocean Freight Rates for the New Shipper and Administrative Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, dated September 29, 2000). Ocean freight rates from Sea Land Services have been obtained and applied in previous investigations, such as Saccharin from the People's Republic of China, 59 FR 58818 (November 15, 1994), Coumarin from the People's

Republic of China, 59 FR 66895 (December 2, 1994) and Persulfates. All ocean freight surrogate values have been adjusted for inflation through the POR.

Currency Conversion

We made currency conversions pursuant to §351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. See http://ia.ita.doc.gov/exchange/index.html.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ Exporter	Time Period	Margin (*ad valorem*)
New Star	8/1/00–1/31/01	74.20%

Any interested party may request a hearing within 30 days of publication of this notice in accordance with §351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue assessment instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we intend to calculate importer–specific assessment rates for petroleum wax candles from the PRC. We will divide the total dumping margins (calculated as the difference between NV and the United States price) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rate against the entered quantity of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC–wide rate, which is currently 54.21 percent; and (4) for all other non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations 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 antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

January 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1791 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817, C–351–835, C–427–823, C–580–849]

Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea from January 28, 2002 until no later than February 25, 2002. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam (Argentina and France), at (202) 482–0176; Sean Carey (Brazil), at (202) 482–3964; and Tipten Troidl (the Republic of Korea), at (202) 482–1767, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Extension of Due Date for Preliminary Determinations

On October 18, 2001, the Department of Commerce (''the Department'') initiated the countervailing duty (''CVD'') investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea,* 66 FR 54218 (October 26, 2001). The initial deadline for these preliminary determinations was December 22, 2001. On November 30, 2001, we issued a notice partially extending these preliminary determinations until January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 66 FR 63523 (December 7, 2001) (''*Preliminary Postponement*''). Pursuant to section 703(c)(1)(B) of the Act, we find that, because of the continued, ''extraordinarily complicated'' nature of these investigations, we must extend the preliminary determinations deadline for the full 130 days.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that

(i) The case is extraordinarily complicated by reason of

(I) The number and complexity of the alleged countervailable subsidy practices;

(II) The novelty of the issues presented;

(III) The need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement for extraordinarily complicated cases, it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather, the *specific transactions*, e.g., equity infusions, debt-to-equity conversions, etc., applied under those programs, which are numerous and appropriately categorized as ''practices.'' With respect to the issue of the complexity of the practice, these practices are complex in nature as reflected in the extensive analysis required to address these subsidies. Therefore, we find that each of these four cases is extraordinarily complicated as described below.

Argentina

As stated in the *Preliminary Postponement,* the Argentine investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. Also, in addition to the reasons stated in the *Preliminary Postponement,* the recent political turmoil in Argentina has made it difficult for the Government of Argentina to provide complete responses to the Department's questionnaire.

Brazil

As stated in the *Preliminary Postponement*, the Brazil investigation is extraordinarily complicated because a number of newly alleged countervailable subsidies practices are complex or novel. This continues to be the case. In order to properly analyze these new allegations, the Department has asked several detailed supplemental questions regarding complex tax provisions which will not be due earlier than January 24, 2002. The answers to these questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

France

As stated in the *Preliminary Postponement,* the French investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. In addition, the Department has asked several detailed supplemental questions which were due on January 16, 2002. The answers to the supplemental questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

The Republic of Korea

As stated in the *Preliminary Postponement,* the Korean investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. In addition, the Department is issuing supplemental questionnaires. The answers to the supplemental questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

Accordingly, we deem these investigations to be extraordinarily complicated and determine, with regard to the third requirement noted above, that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations for an additional 28 days to no later than February 25, 2002.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 18, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1792 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 011109273–1273–01]

RIN 0660–XX13

Closing Comment Period on Deployment of Broadband Networks and Advanced Telecommunications

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: On November 19, 2001, the National Telecommunications and Information Administration (NTIA) published a Notice in the **Federal Register** inviting the public to submit comments on broadband deployment in the United States.[1] Interested parties were requested to submit comments in response to the Notice on or before December 19, 2001. Comments received after the December 19, 2001 deadline were received and posted as late-filed comments. As of January 18, 2002, the comment period in this docket is closed. NTIA will no longer accept or place in the record late-filed documents.

DATES: The comment period in this docket is closed as of January 18, 2002.

[1] 66 FR 57941 (2001). The initial Notice contained an incorrect date for the deadline, but a correction was published the following week. *See* 66 FR 59050 (Nov. 26, 2001).

SUPPLEMENTARY INFORMATION:

Background

NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy. NTIA is the principal advisor to the President on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry. The request for comment on the deployment of broadband and advanced services is a part of NTIA's ongoing effort to obtain more information about broadband issues. The comments submitted in this proceeding will be used to assist the Administration in developing a domestic telecommunications policy and NTIA's continuing support for removing obstacles to broadband deployment.

Due to the complexity of the issues in this proceeding and to facilitate a fully developed record, NTIA allowed interested parties to submit comments after the December 19, 2001 deadline. Since that time, NTIA received a substantial number of comments. Effective January 18, 2002, however, NTIA will no longer accept or place in the public record comments in this proceeding.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–1708 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB).

The package covers collections of information concerning the public and the management and administration of DOE's government-owned contractor-operated (GOCO) facilities and offsite contractors. The information is used by Departmental management to exercise management oversight with respect to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure the Government has sufficient information to judge the degree to which contractors meet contractual requirements; that public funds are being spent in the manner intended, and that fraud, waste, and abuse are immediately detected and eliminated.

DATES: Written comments and recommendations for the proposed collections of information must be submitted to the OMB Desk Officer, within February 25, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of the Deputy Associate CIO for Architecture Standards & Policy, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, MD 20874–1290.)

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Department's Paperwork Reduction Act Submission should be directed to James Renjilian, Office of the General Counsel (GC–80), U.S. Department of Energy, Washington, DC 20585, (202) 586–1522. Any other information should be directed to Ms. Susan L. Frey, (see above address), by telephone at (301) 903–3666 or e-mail at *Susan.Frey@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) Current OMB No. 1910–0800; (2) Title: Legal Collections Packages; (3) Summary: Request for a three-year extension of the existing clearance; (4) Purpose: This information is required by DOE to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively and to exercise management oversight over DOE M&O contractors of the Department's GOCO facilities, and off-site contractors. (5) Type of Respondents: DOE management and operating contractors and off-site contractors; (6) Estimated Number of Responses: 1,894. Estimated number of Burden Hours: 14,100 .

Statutory Authority: Section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on January 15, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Deputy Associate Architecture Standards & Policy, Office of the Chief Information Officer.

[FR Doc. 02–1742 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management, Environmental Management Advisory Board; Renewal

Pursuant to Sectioin 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board has been renewed for a two-year period beginning on January 18, 2002. The Board will provide advice to the Assistant Secretary for Environmental Management.

The Board provides the Assistant Secretary for Environmental Management with information and strategic advice on corporate issues, with a focus on achieving closure of selected sites by 2006. It recommends options to resolve difficult issues faced in the Environmental Management program including; public and worker health and safety, integration and disposition of waste, regulatory agreements, roles and authorities, risk assessment and cost-benefit analyses, program performance and functionality, and science requirements and applications. Consensus recommendations to the Department of Energy from the Board on programmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the

performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Board may be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on January 17, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–1746 Filed 1–23–02; 8:45 am]

BILLING CODE6450–01–M

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14278]

Chemical Industry of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost shared research and development (R&D) of technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical industry. The research is to address priorities identified by the U.S. chemical industry in Technology Vision 2020: The U.S. Chemical Industry and associated technology roadmaps.

DATES: The issuance date of Solicitation Number DE-PS07-02ID14278 will be on or about January 21, 2002. The deadline for receipt of applications will be approximately on April 24, 2002.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS ''User Guide for Contractors'' can be obtained on the IIPS Homepage and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS__HelpDesk@e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doe.gov.*

SUPPLEMENTARY INFORMATION: Approximately $3 million in federal funds are expected to be available to fund the first 12 months of selected research projects. Subject to the availability of funds, approximately $6 million is planned to fund the remaining years of the projects. DOE anticipates making 6 to 8 cooperative agreement awards, each with a duration of three to five years or less. A minimum of three industrial chemical companies must be involved. Collaborations among industry, university, and National Laboratory participants are encouraged. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 15, 2002.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–1744 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 11, 2002, 6:00 p.m.—12:00 p.m.

ADDRESSES: Public Environmental Information Center, 10995 Hamilton-Cleves Highway, Harrison, OH

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order
6:00–6:15 p.m. Chair's Remarks and Ex Officio Announcements
6:15–6:45 p.m. Current Remediation Issues, Silos, Efficiency Efforts
6:45–7:15 p.m. Site Technology Coordination Group Overview and Update on Alpha Monitor
7:15–7:30 p.m. Break
7:30–8:00 p.m. Progress Tracking Materials
8:00–8:45 p.m. Planning for Public Records Workshop
8:45–9:00 p.m. Public Comment
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on January 18, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1745 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Public Law 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed on or before February 25, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1, 3, 5, 6A, 6Q, 7A, and 20, ''Coal Program Package.''

2. Energy Information Administration.

3. OMB Number 1905–0167.

4. Revision and three-year approval requested—Data currently collected on Forms EIA–3A and EIA–5A will be collected by adding appropriate data elements to Forms EIA–3 and EIA–5, which will allow EIA to drop the annual surveys, EIA–3A and EIA–5A. EIA is adding an additional data element to section J. Mining Location, namely, the datum (or geospatial referencing system) that is used in determining the latitude and longitude locations which will not be held confidential.

5. Mandatory.

6. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

7. Business or other for-profit; Federal Government; State, Local or Tribal Government.

8. 9,247 hours (3,440 respondents × 1.5 responses per year × 1.78 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, January 10, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–1743 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–40–002]

Attala Energy Company, LLC; Notice of Filing

January 17, 2002.

Take notice that on January 14, 2002, Attala Energy Company, LLC submitted for filing substitute pages to its FERC Electric Tariff, Original Volume No. 1, in compliance with the order issued in these dockets on December 19, 2001, 97 FERC ¶ 61,282.

Any person desiring to be heard or to protests such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. 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 Commission's web site 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.

Comment Date: January 24, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1733 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–51–000]

California Electricity Oversight Board, Complainant, v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing L.P., Mirant Delta LLC, Reliant Energy Services, Inc., Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynegy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company LLC, Southern California Edison Company, All Other Public and Non-Public Utilities Who Own or Control Generation in California and Who Sell Through the Markets or Use the Transmission Lines Operated by the California Independent System Operator Corporation, and All Scheduling Coordinators Acting on Behalf of the Above Entities, Respondents; Notice of Complaint

January 17, 2002.

Please take notice that on January 14, 2002, the California Electricity Oversight Board (Board) tendered for filing a Complaint alleging that Respondents are submitting unjust and unreasonable bids for decremental energy in the real-time Supplemental

Energy market operated by the California Independent System Operator Corporation (CAISO) such that the resulting wholesale electricity rates are unjust and unreasonable. The Board urges the Federal Energy Regulatory Commission (Commission) to issue an immediate cease and desist order, to impose a ''must-offer'' obligation on generators to submit to the CAISO marginal cost based decremental bids until demonstrable evidence exists that California's wholesale electricity markets are workably competitive, and to take such other action as the Commission deems appropriate.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 5, 2002. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1730 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–52–000]

Municipal Wholesale Power Group, Complainant, v. Wisconsin Power & Light Company, Respondent; Notice of Complaint

January 17, 2002.

Take notice that on January 16, 2002, Municipal Wholesale Power Group (MWPG) filed a complaint with the Federal Energy Regulatory Commission (Commission) against Wisconsin Power & Light Company (WPL) alleging violations of WPL's Rate Schedule W–3, W–3A, and BP–1, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14.

WPL has been served with a copy of the Complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 5, 2002. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1731 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–62–000]

National Fuel Gas Supply Corporation; Notice of Application

January 17, 2002.

Take notice that on January 11, 2002, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP02–62–000 , an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon certain pipeline facilities, located in McKean County, Pennsylvania, 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 be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

National Fuel proposes to abandon approximately 12,354 feet of 16-inch diameter steel pipeline, known as Line C–Maloney Farm, located in Bradford and Foster Townships, McKean County, Pennsylvania. National Fuel states that Line C–Maloney Farm was constructed and placed in service by their predecessor, United Natural Gas Company, in 1947. National Fuel proposes to abandon Line C–Maloney Farm due to the age and condition of the pipeline, and the cost to replace certain deteriorated sections of this pipeline. National Fuel asserts that Line C–Maloney Farm has not been utilized since 1987, but is still maintained in accordance with Department of Transportation Guidelines & Practices. National Fuel avers that in order to continue to meet Department of Transportation standards, Line C–Maloney Farm would require a cathodic protection upgrade at an estimated cost of $106,400.

National Fuel states that it would remove approximately 9,187 feet of 16-inch diameter pipeline, and would abandon approximately 3,167 feet of 16-inch diameter pipeline in place, due to its proximity to residences and areas of steep slopes. National Fuel declares that the abandonment project would begin at a point of interconnection with National Fuel Gas Distribution Corporation at Station T–No. 2593 and extend northwest terminating at the Pennsylvania-New York state line.

National Fuel indicates that since Line C-Maloney Farm has not been utilized since 1987, there will be no abandonment or decrease in service to any customers of National Fuel as a result of the proposed abandonment.

National Fuel states that the estimated cost to abandon the subject facilities is $40,000.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949, or at *reitz@natfuel.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 February 7, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1729 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2928–002]

Progress Ventures, Inc.; Notice of Filing

January 17, 2002.

Take notice that on January 15, 2002, Progress Ventures, Inc. and Progress Genco Ventures, LLC tendered for filing an amendment to its application for authorization to sell power at market-based rates in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: January 24, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1732 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–569–020, *et al.*]

Entergy Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

January 17, 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. Entergy Services, Inc.

[Docket No. ER91–569–020]

Take notice that on January 10, 2002, Entergy Services, Inc., on behalf of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy), submits this status report in response to the Commission's November 20, 2001 Order in the above-captioned docket. A copy of this filing has been served upon the state regulators of the Entergy operating companies.

Comment Date: January 31, 2002.

2. Southern Company Energy Marketing L.P.

[Docket No. ER97–4166–010]

Take notice that on January 10, 2002, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, submitted a Status Report in response to the Commission's directions in the above-referenced dockets.

Comment Date: January 31, 2002.

3. Consumers Energy Company

[Docket No. ER01–1587–004]

Take notice that on January 11, 2002, Consumers Energy Company (Consumers) tendered for filing a corrected page 5 of Exhibit A of the unexecuted agreement filed December 20, 2001 in this docket. The page corrects a typo in the originally filed version. The agreement is to have an effective date of March 21, 2001. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: February 1, 2002.

4. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn, Power Company (Allegheny Power)

[Docket No. ER02–454–003]

Take notice that on January 14, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 371 and Supplement No. 1 to Service Agreement No. 371, which redesignated and corrected First Revised Service Agreement Nos. 364 and 365 under Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date for the Service Agreement and Supplement is January 1, 2002.

Comment Date: February 4, 2002.

5. Wisconsin Power & Light Company

[Docket No. ER02–469–000]

Take notice that on January 11, 2002, Wisconsin Power & Light Company (WPL) filed a Notice of Withdrawal with respect to its rate filing it made in the captioned docket on December 4, 2001. WPL requests that its Notice of Withdrawal be accepted effective as of January 26, 2002.

Comment Date: February 1, 2002.

6. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–756–000]

Take notice that on January 11, 2002, Florida Power Corporation (FPC) tendered for filing a Service Agreement for Short-Term Network Contract Demand Transmission Service with Tampa Electric Company. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: February 1, 2002.

7. Nevada Power Company

[Docket No. ER02–757–000]

Take notice that on January 11, 2002, Nevada Power Company (Nevada Power) tendered for filing a compliance filing in the above-captioned docket pursuant to the Commission's July 31, 1997 omnibus compliance order regarding the filing of transmission service agreements.

Comment Date: February 1, 2002.

8. Orange and Rockland Utilities, Inc., New York Independent System Operator, Inc.

[Docket No. ER02–758–000]

Take notice that on January 11, 2002 Orange and Rockland Utilities, Inc. (O&R) submitted for approval to the Commission modifications to certain O&R specific information contained in Table 1 of Attachment H of the New York Independent System Operator's (NYISO) Open Access Transmission Tariff. These modifications are required as a result of the Commission's Order issued December 21, 2001 in Docket Nos. EC02–7–000 and ER02–109–000 authorizing the establishment of a new Rockland Electric Company zone in the PJM Interconnection, L.L.C. On that same date, the NYISO also filed parallel changes to Table 1 of Attachment H. O&R and the NYISO request an effective date of February 1, 2002 and request waiver of the Commission's notice requirements.

Copies of this filing have been served on the New York, New Jersey and Pennsylvania regulatory commissions and upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: February 1, 2002.

9. Idaho Power Company

[Docket No. ER02–759–000]

Take notice that on January 11, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and IDACORP Energy Company, under its open access transmission tariff in the above-captioned proceeding.

Comment Date: February 1, 2002.

10. Idaho Power Company

[Docket No. ER02–760–000]

Take notice that on January 11, 2002, Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and IDACORP Energy Company, under its open access transmission tariff in the above-captioned proceeding.

Comment Date: February 1, 2002.

11. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–761–000]

Take notice that on January 11, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 154 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of December 12, 2001 to EnergyUSA–TPC Corp.

Copies of the filing have been provided to all parties of record.

Comment Date: February 1, 2002.

12. Alliant Energy Corporate Services Inc.

[Docket No. ER02–762–000]

Take notice that on January 11, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing with the Federal Energy Regulatory Commission (Commission), a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Utilities Plus, (Customer).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of December 13, 2001.

Comment Date: February 1, 2002.

13. Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP

[Docket No. ER02–763–000]

Take notice that on January 11, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) rendered for filing two agreements pursuant to which the Wildflower Entities will sell capacity, energy and ancillary services at market-based rates according to their FERC Electric Tariff, Original Volume No. 1 to their affiliates Coral Energy Management, LLC, under one agreement, and to Coral Power, L.L.C. under the other agreement.

Comment Date: February 1, 2002.

14. Virginia Electric and Power Company

[Docket No. ER02–764–000]

Take notice that on January 14, 2002, Virginia Electric and Power Company (the Company), respectfully tendered for filing Service Agreement by Virginia Electric and Power Company to MIECO, Inc., designated as Service Agreement No. 8, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001.

The Company requests an effective date of December 27, 2001, as requested by the customer. Copies of the filing were served upon MIECO, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 4, 2002.

15. UtiliCorp United Inc.

[Docket No. ER02–765–000]

Take notice that on January 14, 2002, UtiliCorp United Inc. (UtiliCorp) tendered for filing Service Agreement No. 109 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 24, a network transmission service agreement between UtiliCorp's Missouri Public Service division and the City of El Dorado Springs, Missouri. UtiliCorp requests an effective date for the service agreement of December 16, 2001.

Comment Date: February 4, 2002.

16. Florida Power & Light Company

[Docket Nos. ER02–766–000]

Take notice that on January 14, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted Interconnection and Operation Agreement between FPL and Progress Energy's DeSoto County Generating Company, LLC (Progress DeSoto) that sets forth the terms and conditions governing the interconnection between Progress DeSoto's generating project and FPL's transmission system. A copy of this filing has been served on Progress DeSoto and the Florida Public Service Commission.

Comment Date: February 4, 2002.

17. Allegheny Energy Global Markets, LLC

[Docket No. ER02–767–000]

Take notice that on January 14, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Global Markets, LLC (AEGM) filed a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1–5.

AEGM requests an effective date for the cancellation of December 31, 2001.

Comment Date: February 4, 2002.

18. Idaho Power Company and IDACORP Energy, Inc.

[Docket No. ER02–768–000]

Take notice that on January 14, 2002, Idaho Power Company (IPC) and IDACORP Energy, Inc.(IE) filed an amendment to the Agreement for Electricity Supply Services between IPC and IE in this proceeding.

Comment Date: February 4, 2002.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–769–000]

Take notice that on January 14, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The supplement provides for an increase in the carrying charges under the facilities agreement.

Con Edison states that a copy of this filing has been served upon O&R.

Comment Date: February 4, 2002.

20. International Transmission Company

[Docket No. ER02–770–000]

Take notice that on January 14, 2002, International Transmission Company (ITC) filed with the Federal Energy Regulatory Commission (the Commission) an executed Service Agreement between ITC and Mirant Wyandotte, LLC (the Agreement).

ITC requests that the Commission accept the Agreement for filing effective as of January 15, 2002.

Comment Date: February 4, 2002.

21. Handsome Lake Energy, LLC

[Docket No. ER02–771–000]

Take notice that on January 14, 2002, Handsome Lake Energy, LLC (Handsome Lake) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for reactive power and voltage control from generation sources service provided to the transmission facilities controlled by the PJM Interconnection LLC (PJM).

Handsome Lake requests an effective date for the proposed rate schedule of January 12, 2002.

Handsome Lake mailed a copy of this filing to PJM.

Comment Date: February 4, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1728 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–42–000, *et al*.]

Maritime Electric Company, Limited, *et al*; Electric Rate and Corporate Regulation Filings

January 16, 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. Maritime Electric Company, Limited, FortisUS Energy Corporation and Fortis Properties Corporation

[Docket No. EC02–42–000]

Take notice that on January 10, 2002, Maritime Electric Company, Limited, on behalf of itself, FortisUS Energy Corporation, and Fortis Properties Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities under an intra-corporate restructuring.

Comment Date: January 31, 2002.

2. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on January 14, 2002, TXU Tradinghouse Company LP (TXU) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on January 14, 2002, TXU DeCordova Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU Mountain Creek Company LP

[Docket No. EG02–51–000]

Take notice that on January 14, 2002, TXU Mountain Creek Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on January 14, 2002, TXU Big Brown Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on January 14, 2002, TXU Handley Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Generation Company LP

[Docket No. EG02–54–000]

Take notice that on January 14, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. ExTex LaPorte Limited Partnership

[Docket No. EG02–60–000]

Take notice that on January 9, 2002, ExTex LaPorte Limited Partnership (ExTex) filed a supplement to its Application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: February 6, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Southwestern Electric Power Company

[Docket No. ER02–251–000]

Take notice that on January 10, 2002, Southwestern Electric Power Company (SWEPCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Power Supply Agreement Between Southwestern Electric Power Company and the City of Hope, Arkansas.

Comment Date: January 31, 2002.

10. Central Maine Power Company

[Docket No. ER02–720–000]

Take notice that on January 8, 2002, Central Maine Power Company (Central Maine) filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, an executed System Contract Entitlement Agreement, an executed Renewable and Eligible Resource Entitlement Agreement, and an executed Nuclear Entitlement Agreement (collectively, Entitlement Agreements), as well as an executed Comprehensive Credit Support and Final Settlement Calculation Agreement (A Credit Support Agreements). In addition, CMP requested confidential treatment for certain competitively sensitive material contained in the Entitlement Agreements and Credit Support Agreement.

Comment Date: January 29, 2002.

11. PPL Electric Utilities Corporation

[Docket No. ER02–722–000]

Take notice that on January 8, 2002, PPL Electric Utilities Corporation (PPL Electric) filed notice of termination of the Service Agreement between it and GPU Advanced Resources, Inc. designated as Service Agreement No. 11 under PPL Electric's FERC Electric Rate Schedule, First Revised Volume No. 5. PPL Electric requests a March 11, 2002 termination date for the Agreement.

Notice of the termination has been served upon GPU Advanced Resources, Inc.

Comment Date: January 29, 2002.

12. MxEnergy Inc.

[Docket No. ER02–737–000]

Take notice that on January 9, 2002, MxEnergy Inc. (Seller) petitioned the Federal Energy Regulatory Commission (Commission) for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under subparts B and C of part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: January 30, 2002.

13. Illinois Power Company

[Docket No. ER02–738–000]

Take notice that on January 9, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Corn Belt Electric Cooperative Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of January 1, 2002, for the Agreements and accordingly seeks a waiver of the Commission's notice requirement.

Comment Date: January 30, 2002.

14. Avista Corporation

[Docket No. ER02–739–000]

Take notice that on January 9, 2002, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.12 of the Commissions, 18

CFR part 35.12 , an executed Mutual Netting Agreement, Rate Schedule No. 292, with Sacramento Municipal Utility District, effective January 1, 2002.

Notice of the filing has been served to Mr. Thomas W. Ingwers Director, Energy Trading & Contracts Sacramento Municipal Utility District.

Comment Date: January 30, 2002.

15. Northwest Natural Gas Company

[Docket No. ER02–740–000]

Take notice that on January 9, 2002, Northwest Natural Gas Company (NW Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its Rate Schedule FERC No. 1 applicable to sales of electricity at market-based rates. NW Natural states that it has not made any sales of electricity under that rate schedule and has no plans to do so.

NW Natural has asked to make the Notice of Cancellation effective on January 10, 2002.

Comment Date: January 30, 2002.

16. Exelon Generation Company, LLC

[Docket No. ER02–741–000]

Take notice that on January 10, 2002, Exelon Generation Company, LLC tendered for filing a service agreement under its market-based rate wholesale power sales tariff under which it will make sales of capacity and energy to Exelon Energy Company.

Comment Date: January 31, 2002.

17. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–742–000]

Take notice that on January 10, 2002, Florida Power Corporation (FPC) tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Florida Power & Light Company. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC. A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of January 1, 2002 for this Service Agreement.

Comment Date: January 31, 2002.

18. Cinergy Services, Inc.

[Docket No. ER02–743–000]

Take notice that on January 10, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and East Kentucky Power Cooperative, Inc. (East Kentucky). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment Date: January 31, 2002.

19. New York State Electric & Gas Corporation

[Docket No. ER02–744–000]

Take notice that on January 10, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, a supplement to Rate schedule 72 filed with FERC corresponding to an agreement with the Municipal Board of the Village of Bath (the Village). The proposed supplement would decrease revenues by $277.63 based on the twelve month period ending December 31, 2000.

NYSEG requests an effective date of January 1, 2002. Copies of the filing were served upon the Municipal board of the Village of Bath and the Public Service Commission of the State of New York.

Comment Date: January 31, 2002.

20. American Transmission Company LLC

[Docket No. ER02–753–000]

Take notice that on January 10, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Network Operating Agreement and a Revised Network Integration Service Agreement for Wisconsin Rapids Water Works and Lighting Commission. ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 31, 2002.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–754–000]

Take notice that on January 10, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of September 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment Date: January 31, 2002.

22. Virginia Electric and Power Company

[Docket No. ER02–755–000]

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with GenPower Earleys, L.L.C. (GenPower) that complies with the Commission's December 11, 2001 Order.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the revised tariff page effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11th Order.

Copies of the filing were served upon GenPower, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment Date: January 31, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1697 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7132–7]

EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period for draft perchlorate toxicological review and risk characterization.

SUMMARY: On January 2, 2002, EPA published a **Federal Register** notice (67 FR 75) announcing: the public availability, expected on January 9, 2002, of the revised draft document entitled, ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' (NCEA–I–0503); the beginning of a 30-day public comment period on the revised draft document; and an external peer review workshop in Sacramento, California on March 5 and 6, 2002. Due to some necessary technical editing to clarify the discussion of some of the studies included in the draft document, public release, and availability of the perchlorate external review draft was delayed by approximately one week. Accordingly, EPA is extending the public comment period until February 19, 2002. Please note that comments received by February 19 will be made available at the peer review workshop.

DATES: Only comments postmarked by February 19, 2002, will be made available at the workshop.

ADDRESSES: The external review draft of the perchlorate document is available on EPA's National Center for Environmental Assessment (NCEA) Web site at *http://www.epa.gov/ncea.* 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.*

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and submission of comments should be directed to EPA's contractor, Eastern Research Group, Inc. (ERG), at 781–674–7374. For technical inquiries, please contact: Annie M. Jarabek, U.S. Environmental Protection Agency (MD 52), USEPA Mailroom, Research Triangle Park, NC 27711; telephone 919–541–4847; facsimile 919–541–1818; e-mail *jarabek.annie@epa.gov.*

Dated: January 17, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–1757 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices; Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 29, 2002 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, January 31, 2002 at 10:00 A.M.

PLACE: 999 E Street, N.W., Washington, DC. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Comments on Draft Interpretation of Travel Allocation Regulations at 11 CFR 106.3(b).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–1933 Filed 1–22–02; 8:45 am]

BILLING CODE 6715–01–M

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, N.W., Room 940. 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.: 011745–003.

Title: Evergreen/Lloyd Triestino Alliance Agreement.

Parties: Evergreen Marine Corp.(Taiwan) Ltd. (''Evergreen''), Lloyd Triestino Di Navegazione S.P.A.

Synopsis: The proposed amendment: adds Hatsu Marine Limited as a party to the agreement; adds four additional vessels to be delivered between April of 2002 and June of 2003, replacing four Evergreen vessels; and adds certain authority concerning the sharing of personnel for supervisory, administrative, marketing, accounting, and operational functions.

Agreement No.: 201022–001.

Title: New Orleans/Coastal Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Coastal Cargo Company, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through March 31, 2002.

Agreement No.: 201030–002.

Title: New Orleans/SSA Gulf/P&O Ports Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, SSA Gulf Terminals, Inc., P&O Ports Gulfport, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through July 23, 2002.

Agreement No.: 201044–002.

Title: San Francisco MTC Non-Exclusive Terminal Management Agreement.

Parties: San Francisco Port Commission, Marine Terminals Corporation.

Synopsis: The proposed amendment makes changes in management details and provides a sharing arrangement to offset losses to MTC resulting from MTC not meeting its revenues for the facility. The agreement continues to run through December 31, 2002.

Agreement No.: 201108–001.

Title: New Orleans/Empire Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Empire Stevedoring (LA), Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges.

Agreement No.: 201110–004.

Title: Oakland/Hanjin/Total Terminal Agreement.

Parties: Port of Oakland, Hanjin Shipping Company, Ltd., Total Terminals International, LLC.

Synopsis: The proposed amendment assigns Hanjin's rights under the

agreement to Total Terminals International, LLC. The agreement continues to run through June 7, 2016.

Agreement No.: 201121–001.

Title: New Orleans/Pacorini Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Pacorini USA, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through April 14, 2006.

By Order of the Federal Maritime Commission.

Dated: January 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1801 Filed 1–23–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

US Rich Long, Inc., 10932 Schmidt Road, #H, El Monte, CA 91733, Officers: George Sun, President, (Qualifying Individual), Gloria You, Director

Florida Trade Consolidators Inc., 6123 NW 72nd Avenue, Miami, FL 33166, Officer: Samir Assad, President, (Qualifying Individual)

DLS Logistics, Inc., 1026 Edwards Road, Burlingame, CA 94010, Officers: Denis I. Cheng, President, (Qualifying Individual), Lawrence Chang, Vice President

ADCOM Express Inc. dba ADCOM Worldwide Inc., 7424 W. 78th Street, Edina, MN 55439, Officers: Douglas Bramer, Vice President, (Qualifying Individual), Robert Friedman, CEO

America Keyun Int'l Logistics, Inc., 939 S. Atlantic Blvd., #209A, Monterey Park, CA 91754, Officers: Yan Yu, Secretary, (Qualifying Individual), Li, Ying Jie, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

KCC Logistics Inc., 2300 E. Higgins Road, Suite #204, Elk Grove Village, IL 60007, Officer: James S. Lee, President, (Qualifying Individual)

Associated Consolidators Express, 1273 Industrial Pkwy, Unit 290, Hayward, CA 94544, Officer: Frank Escalante, Operations Manager, (Qualifying Individual)

American Links Logistics International, Inc., 3591 Highland Drive, San Bruno, CA 94066, Officers: Letty Batacan, Import Manager, (Qualifying Individual), Walfredo M. Enrico, President

7 Seas Shipping, Inc. dba E J Freight Forwarding, Inc., 9060 Telstar Avenue, Suite 220, El Monte, CA 91731, Officer: Liqiu Mai, President, (Qualifying Individual)

Moog International, Inc., 1223 Grove Road, Pittsburgh, PA 15234–2397, Officers: James A. Frye, Vice President, (Qualifying Individual), Ronald P. Moog, President

United Shipping Services, Inc., 2321 Highbury Avenue, #51, Los Angeles, CA 90032, Officers: Rachel Liu, President, (Qualifying Individual), Peng-Xing Liu, Secretary

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Krenz International Inc., 3125 S. 56th Street, Milwaukee, WI 53219, Officer: John F. Krenz, President, (Qualifying Individual)

Dated: January 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1802 Filed 1–23–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Credit Riviere Bancorporation, Inc., Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Sinai, Sinai, South Dakota.

Board of Governors of the Federal Reserve System, January 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1709 Filed 1–23–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the twelfth meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on February 13, 2002, and 8:30 a.m. to 5 p.m. on February 14, 2002, at the Bethesda Marriott, 5151 Pooks Hill road, Bethesda, MD 20814. The meeting will be open to the public with attendance limited to space available.

The Committee will discuss a number of topics, including a report from HHS agencies on their support of activities that increase the knowledge and utility of genetic tests, horizon scanning in genetic testing, and the Informed Consent Work Group's development of principles of informed consent in clinical and public health settings. Through a number of invited presentations, the Committee will also begin exploring issues regarding the collection and analysis of population data by race and ethnicity in health policy generally and in genetic testing specifically. Time will be provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGT office is located at 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Dated: January 15, 2002.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 02–1793 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Anthropometric Survey of Respirator Users—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

The overall goal of the current project is to develop respirator fit-test panels that accurately represent today's workers who rely on respirators to prevent work-related respiratory illnesses, injuries, and death. The respirator fit-test panels currently used are 25-subject panels, developed by Los Alamos National Laboratory (LANL) based on data from the 1967–1968 survey of U.S. Air Force men and women. The half-mask panel is based on face length and lip length and the full-facepiece panel is based on face length and face width. These panels were established to represent the working population. The fit of respirators on these subject panels is assumed to be representative of the fit of respirators in the user populations. Respirators designed to fit these panels are also expected to accommodate at least 95% of the wearers. However, NIOSH research indicated that the LANL panel for full-facepiece respirators accommodated only 84% of current civilian subjects. Sizing data generated by the military for use in fitting respirators has been the normative basis for commercial respirator sizing. Anthropometric data developed for males of military age in the 1950's and 1960's is still in use today. Military populations cannot represent the worker population because of relatively strict anthropometric armed forces entry requirements and height/weight guidelines for troop retention. Personal protective equipment designed and sized for a military population may not provide the same level of protection to civilian workers because of the greater diversity in body size and shape seen in civilian populations. In addition, the demographics of the U.S. population have changed over the last 30 years. Thus, it is necessary to assess and refine the LANL fit-test panels.

This project will first develop an anthropometric database detailing the face-size distributions of respirator users using both traditional measurement methods and three-dimensional (3–D) scanning systems. The source population for this study will be the nationwide respirator users population. The databases will then be used to establish respirator fit-test panels that accurately represent today's workers. Three-dimensional anthropometry has only been available recently, and there is no track record of applying scan data to respirators. This study will provide preliminary data on which to develop methods for sizing and designing respirators and protective eyewear using 3–D scan data.

The subjects will be recruited from various industries in which workers rely on respirators to prevent work-related respiratory illnesses, injuries, and death (*e.g.,* manufacturing, construction, mining, and health care). The project will also address emergency responders to chemical and biological terrorism and other crisis situations. Thus, subjects will also include law enforcement officers, firefighters, and health care workers. Height and weight plus 18 facial dimensions will be measured with traditional methods. A total of 4,000 subjects will be measured using traditional methods. Of those, 1,000 will

be scanned using a 3–D head scanner (Cyberware Model 3030/RGB). The populations will be sampled by age, race and gender. A stratified sampling plan is being used with equal sample size in each cell (166). The strata consist of: 3 age groups (18–29, 30–44, and 45–65 years), 2 gender strata (male and female), and 4 ethnic groups (White, African Americans, Hispanic, and Others). The total number of cells is 24. The study will be conducted at five locations nationwide. Although test sites have yet to be determined, data collection is anticipated at two facilities in the western U.S., one in the central portion of the country, and at two locations in the east.

Information generated by this research project will benefit:

(1) The participants and workers exposed to various gases and aerosols by improving fit and function of respirators worn during work; and (2) those involved in testing, certifying, and manufacturing respirators to be used in industry, by providing them with fit-test panels that accurately represent today's workers. The panels can be used for evaluating respirator facepiece fit characteristics. The long-term potential benefits are improved respirator quality and performance and increased worker protection. There are no costs to respondents.

Respondents	Number of respondents	Number of responses respondent	Average burden per response (in hours)	Total burden in hours
Workers (Data Collection #1)	3000	1	15/60	750
Workers (Data Collection #2)	1000	1	20/60	333
Total				1083

Dated: January 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Program Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1690 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Preventive Health and Health Services Block Grant, Annual Application and Reports (OMB #0920–0106)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). In 1994, OMB approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services (PHHS) Block Grant (OMB #0920–0106). This approval expires on November 30, 2001. CDC is requesting OMB clearance for this legislatively mandated information collection until November 30, 2004. The request is to approve the development and adherence to *Healthy People 2010*, the Nation's Health Objectives which was released the Spring of 2000. The PHHS block grant is mandated according to section 1904 to adhere to the Healthy People framework, therefore, the current application and report format was restructured to coincide with 2010.

This information collected through the applications from the official State health agencies is required from section 1905 of the Public Health Service Act. There is a slight change in the proposed information collection from previous years. The changes include more program specific information and the relationship of block funded activities to program strategy. The information collected from the annual reports is required by section 1906. The development of a PHHS block grant Web page with data Web links from existing federal databases will be used to coincide with the collection of uniform data for the annual report. The availability to collect data through internet accessibility will allow for a more streamlined and efficient use of data processing by the states and will reduce the states burden of duplicate reporting on outcome and risk factor data. The total annual burden for this data collection is 4,270 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)
Application	61	1	30
Report	61	1	40

Dated: January 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1689 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02E01]

Medical Monitoring for New York Personnel Engaged in Emergency Response Activities Related to the Disaster of September 11, 2001; Notice of Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of funds for a cooperative agreement program for Medical Monitoring for New York Personnel Engaged in Emergency Response Activities Related to the Disaster of September 11, 2001. The purpose of the program is to provide medical monitoring for New York City Fire Department and New York State Personnel who may have been exposed to hazardous substances while providing emergency response services as a result of the disaster of September 11, 2001. This program addresses the ''Healthy People 2010'' focus areas Environmental Health and Public Health Infrastructure.

B. Eligible Applicant

Eligible applicants are Health Research, Inc./New York State Department of Health and New York City Fire Department. No other applications were solicited. New York State has received a Presidential declaration of disaster.

This project is authorized by H.R. 2888, 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States.

C. Availability of Funds

Approximately $4,801,550 is available to fund one award to New York City Fire Department, and approximately $2,406,000 is available to fund one award to Health Research, Inc./New York State Department of Health. It is expected that each award will be made for a 12-month budget period. As long as funds are directed for these applicants, continuation funding will be made available for up to 5 years. Funding estimates may vary and are subject to change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Lead Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2740, E-mail address: *sqr2@cdc.gov.*

For program technical assistance, contact: Ron Burger, Public Health Advisor, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (MS F–38) Atlanta, GA 30341–3724, Telephone number: (404) 488–4024, E-mail address: *rburger@cdc.gov.*

Dated: January 17, 2002.

Rebecca B. O'Kelley,

Chief, International Grants and Contracts Branch, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 02–1717 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #02001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #02001.

Times and Dates:

7 p.m.–7:25 p.m., February 17, 2002 (Open)

7:30 p.m.–10:15 p.m., February 17, 2002 (Closed)

8 a.m.–6 p.m., February 18, 2002 (Closed)

8 a.m.–6:30 p.m., February 19, 2002 (Closed)

8 a.m.–1 p.m., February 20, 2002 (Closed)

Place: Trade Winds Sandpiper Hotel, 6000 Gulf Boulevard, St. Pete Beach, Florida 33706.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #02001.

CONTACT PERSON FOR MORE INFORMATION: Bernadine Kuchinski, Ph.D., Occupational Health Consultant, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, M/S D40, telephone (404) 639–3342.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 16, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–1718 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Centers for Medicare and Medicaid Services, HHS.

This notice announces and displays OMB control numbers for Centers for Medicare and Medicaid Services (CMS) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR part 1320. Once OMB has

approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be ''provided in a manner that is reasonably calculated to inform the public.'' To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement, CMS has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for CMS's information collections that have been approved by OMB.

	OMB control Nos.
42 CFR:	
405.262	0938–0267
405.371	0938–0600
405.376	0938–0270
405.378	0938–0600
405.410	0938–0730
405.430, 405.435, 405.440, 405.445, 405.455	0938–0730
405.711	0938–0045
405.807	0938–0033
405.821	0938–0034
405.2100–405.2171	0938–0386
405.2110, 405.2112	0938–0657, & 0658
405.2133	0938–0046
405.2135–405.2171	0938–0360
405.2470	0938–0155
406.7	0938–0251
406.13	0938–0080
406.15	0938–0501
406.28	0938–0025 & 0787
407.10, 407.11	0938–0245
407.18	0938–0679
407.27	0938–0025 & 0787
407.40	0938–0035
408.6	0938–0041
409.40–409.50	0938–0357
410.1	0938–0679
410.2	0938–0770
410.32	0938–0685
410.33	0938–0721
410.36	0938–0357
410.38	0938–0534
410.40	0938–0042
410.61	0938–0730
410.71	0938–0685
410.141–410.145	0938–0818
410.170	0938–0357
411.1	0938–0846
411.4–411.15	0938–0357
411.20–411.206	0938–0565
411.350–411.357	0938–0846
411.370—411.389	0938–0714
411.404—411.406	0938–0465, 0781 & 0692
411.408	0938–0566
412	0938–0842
412.20–412.32	0938–0358
412.40–412.52	0938–0359
412.42	0938–0692
412.44, 412.46	0938–0445
412.92	0938–0477
412.105	0938–0456
412.106	0938–0691
412.116	0938–0269
412.256	0938–0573
413	0938–0842
413.17	0938–0202 & 0685
413.20	0938–0202, 0236 & 0600
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0236, 0301, 0463, 0511 & 0758
413.64	0938–0269

	OMB control Nos.
413.106	0938–0022
413.170	0938–0296
413.343	0938–0739
414.40	0938–0008
414.63	0938–0818
414.330	0938–0372
415.50, 415.55, 415.60, 415.70	0938–0301
415.110	0938–0730
415.150, 415.152, 415.160, 415.162	0938–0301
416.1–416.150	0938–0266
416.44	0938–0242
417.126	0938–0469 & 0732
417.143	0938–0470
417.162	0938–0469
417.408	0938–0470
417.436	0938–0610
417.440	0938–0692
417.470	0938–0732
417.478	0938–0469
417.479, 417.500	0938–0700
417.801	0938–0610
417.800–417.840	0938–0768
418.1–418.405	0938–0313& 0379
418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100	0938–0302
418.100	0938–0242
420.200–420.206	0938–0086
421.100	0938–0357
421.310, 421.312	0938–0723
422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, 422.560–422.622	0938–0763
422.1–422.700	0938–0753
422.64, 422.111, 422.560—422.622	0938–0778
422.152	0938–0701 & 0840
422.208, 422.210	0938–0700
422.300–422.312	0938–0742
422.370–422.378	0938–0722
422.568	0938–0829
422.620	0938–0692
424.5	0938–0534 & 0279
424.20	0938–0454
424.22	0938–0357, 0489 & 0846
424.24	0938–0730
424.32	0938–0008 & 0739
424.44	0938–0008
424.57	0938–0717, 0749, & 0685
424.73, 424.80	0938–0685
424.103	0938–0023
424.123	0938–0484
424.124	0938–0042
426.102–426.104	0938–0526
430.10	0938–0673
430.10–430.20	0938–0193
430.12	0938–0610
430.20	0938–0610
430.30	0938–0101
431.1–431.865	0938–0062
431.17	0938–0467
431.107	0938–0610
431.306	0938–0467
431.630	0938–0445
431.636	0938–0841
431.800	0938–0300
431.800–431.820	0938–0144
431.800–431.865	0938–0146, 0147, & 0246
433.68, 433.74	0938–0618
433.138	0938–0502
434.28	0938–0610
434.44, 434.67, 434.70	0938–0700
435.1–435.1011	0938–0062
435.910, 435.920, 435.940–435.960	0938–0467
438.364	0938–0786
440.1–440.270	0938–0062
440.30	0938–0685

	OMB control Nos.
440.167	0938–0193
440.180	0938–0272, & 0449
441.16	0938–0713
441.60	0938–0354
441.152	0938–0754
441.300–441.305	0938–0272
441.300–441.310	0938–0449
442.1–442.119	0938–0062
447.31	0938–0287
447.53	0938–0429
447.254	0938–0784
447.272	0938–0618 & 0855
447.280	0938–0624
447.321	0938–0855
447.500–447.542	0938–0676
447.550	0938–0676
455.100–455.106	0938–0086
456.654	0938–0445
456.700, 456.705, 456.709, 456.711, 456.712	0938–0659
457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180.	0938–0841
460.12, 460.22, 460.30, 460.32, 460.52, 460.60, 460.68, 460.70, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.206, 460.208, 460.210.	0938–0790
466.71, 466.73, 466.74, 466.78	0938–0445
466.78	0938–0692
473.18, 473.34, 473.36, 473.42	0938–0443
476.104, 476.105, 476.116, 476.134	0938–0426
482.1–482.66	0938–0380
482.2–482.57	0938–0382
482.12, 482.22	0938–0328
482.27	0938–0328
482.41	0938–0242
482.30, 482.41, 482.43, 482.53, 482.56, 482.57	0938–0328
482.45	0938–0810
482.60—482.62	0938–0378 & 0328
482.66	0938–0328, & 0624
483.10	0938–0610
483.270	0938–0242
483.350–483.376	0938–0833
483.400–483.480	0938–0062
483.470	0938–0242
484.1–484.52	0938–0365
484.10	0938–0610 & 0781
484.10–484.52	0938–0355
484.11	0938–0761
484.12	0938–0685
484.18	0938–0357
484.20	0938–0761
484.55	0938–0760
484.220	0938–0760
485.56, 485.58, 485.60, 485.64, 485.66	0938–0267
485.701–485.729	0938–0065, & 0273
486.100—486.110	0938–0027
486.104, 486.106, 486.110	0938–0338
486.301–486.325	0938–0512, & 0688
488.4–488.9	0938–0690
488.18	0938–0391, & 0667
488.26	0938–0391
488.28	0938–0391
488.60	0938–0360
488.201	0938–0690
489	0938–0832
489.20	0938–0214, 0667, & 0692
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.32, 489.34	0938–0692
489.66, 489.67	0938–0713
489.102	0938–0610
491.1–491.11	0938–0074

	OMB control Nos.
491.3, 491.8	0938–0792
491.9	0938–0334
493.1–493.2001	0938–0151, 0544, 0581, 0599, 0612, 0650, & 0653
493.551–493.557	0938–0686
493.1269—493.1285	0938–0170
493.1840	0938–0655
498.40–498.95	0938–0486, & 0567
1003.100, 1003.101, 1003.103	0938–0700
1004.40, 1004.50, 1004.60, 1004.70	0938–0444
45 CFR:	
5b	0938–0734
146	0938–0702
146.121	0938–0819
146.141	0938–0827
148	0938–0703 & 0797

Dated: January 15, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–1686 Filed 1–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0851]

Determination of Regulatory Review Period for Purposes of Patent Extension; T-Scan 2000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for T-Scan 2000 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

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

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device T-Scan 2000. T-Scan 2000 is intended for use as an adjunct to mammography in patients who have equivocal mammographic findings within ACR–BI–RADS categories 3 and 4. In particular, it is not intended for use in cases with clear mammographic or non-mammographic indications for biopsy. This device provides the radiologist with additional information to guide a biopsy recommendation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for T-Scan 2000 (U.S. Patent No. 4,291,708) from Transcan Research and Development Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 13, 2000, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of T-Scan 2000 represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for T-Scan 2000 is 1,595 days. Of this time, 964 days occurred during the testing phase of the regulatory review period, while 631 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: December 5, 1994. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective December 5, 1994.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: July 25, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for T-Scan 2000 (PMA P970033) was initially submitted July 25, 1997.

3. *The date the application was approved*: April 16, 1999. FDA has

verified the applicant's claim that PMA P970033 was approved on April 16, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 25, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 23, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1723 Filed 1–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: February 20–21, 2002.

Open: February 20, 2002, 8:45 AM to 4 PM.

Agenda: Program reports and presentations: Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: February 20, 2002, 11:55 AM to 12:55 PM.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: February 20, 2002, 12:55 PM to 1:55 PM.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Ellen Feigal, Executive Secretary, Subcommittee on Clinical Investigations, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, 3A44, Bethesda, MD 20892, (301) 496–6711.

Name of Committee: National Cancer Advisory Board.

Closed: February 20, 2002, 4:15 PM to Recess.

Agenda: Review of grant applications; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 21, 2002, 8:45 AM to Adjournment.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1794 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of other and the discussions

would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: January 23, 2002.

Closed: 1 PM to 3 PM.

Agenda: In preparation for the appointment of new members under the Bush Administration, the current President's Cancer Panel Members intend to discuss and review the performance on Federal and contract support staff for the Panel, evaluate the Panel's process, and make recommendations to be forwarded to incoming members and NCI management.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1796 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 23, 2002.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 8, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1795 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Mental Retardation Research Subcommittee, Mental Retardation Research Subcommittee.

Date: March 21–22, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1797 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Drug Development for Opportunistic Infections—Hepatitis C.

Date: February 28—March 1, 2002.

Time: February 28, 2002, 8:30 AM to adjournment.

Agenda: To review and evaluate contract proposals.

Place: 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, NMSC–7617, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1798 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: February 20–21, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, 1400 M Street NW, Washington, DC 20005.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1799 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: February 15, 2002.

Time: 12:00 PM to 2:30 PM.

Agenda: To review and evaluate contract proposals.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 746, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1800 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4733–N–01]

Notice of Proposed Information Collection: Comment Request, HUD-Administered Small Cities Program Performance Assessment Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Steve Rhodeside at (202) 708–1322, Extension 7375 (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD-Administered Small Cities Program Performance Assessment Report.

OMB Control Number, if applicable: 2506–0020.

Description of the need for the information and proposed use: The information collected from grant recipients participating in the state-administered CDBG program provides HUD with financial and physical development status of each activity funded. These reports are used to determine grant recipient performance and for HUD's Annual Report to Congress on accomplishments.

Agency form numbers, if applicable: The Housing and Community Development Act of 1974, as amended, requires grant recipients that receive CDBG funding to submit a Performance Assessment Report (PAR) on an annual basis to report on program progress; and such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds (section 104(e)(2)).

Members of affected public: Grant recipients participating in the State-administered CDBG program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 800. The proposed frequency of the response to the collection of information is annual. Annual recordkeeping is estimated at 6,400 hours for approximately 800 grant recipients.

Status of the proposed information collection: Reinstatement, with minor changes, of a previously approved collection with expired and a request for OMB renewal for three years. The current OMB approval expired in January 2000.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 10, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary.

[FR Doc. 02–1685 Filed 1–23–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–01]

Notice of Submission of Proposed Information Collection to OMB; Loan Guarantee Recovery Fund Established Pursuant to the Church Arson Prevention Act of 1996

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0159) should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Report Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (2) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recover Fund established pursuant to the Church Arson Prevention Act of 1996.

OMB Approval Number: 2506–0159.

Form Numbers: SF–424, HUD–40076–LGA.

Description of the Need for the Information and Is Proposed Use: Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts or arson or terrorism.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submissions: Monthly.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	100		8		12.75		10,200

Total Estimated Burden Hours: 10,200.

Status: Extension of a currently approved collection.

Authority Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 17, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–1684 Filed 1–23–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review (extension of a currently approved collection); nomination for Young American Medal for Service.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 1, 2001 (Volume 66, page 49980), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 25, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Service.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/2, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal. *Other:* Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–1706 Filed 1–23–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information collection under review (extension of a currently approved collection); nomination for Young American Medal for Bravery.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 1, 2001 (Volume 66, page 49979), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 25, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/1, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government, State, Local or Tribal.

Other: Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 the annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–1707 Filed 1–23–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,482; Colorgraphic Offset Printing Co., Lancaster, NY
TA–W–40,128; TNS Mills, Inc., Eufala Plant, Eufala, AL
TA–W–40,050; Moco Thermal Industries, Romulus, MI
TA–W–39,605; Kimble Glass, Inc., Vineland, NJ
TA–W–40,317; Texfi Industries, Inc., Rocky Mount, NC
TA–W–39,658; Taylor Wharton, Harsco Gas and Fluid Control, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,794; M/A-Com Ceram Buffalo, NY
TA–W–39,938; Honeywell, Inc., Clearfield, UT
TA–W–38,579; National Starch and Chemical Co., Meredosia, IL
TA–W–40,097; Ismeca, USA, Vista, CA
TA–W–40,222; Richmond Technology, An Illinois Tool Works Co., Redlands, CA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,319; General Electro Mechanical Corp., West Seneca, NY
TA–W–40,296; Rubatex Corp., Bedford, VA
TA–W–39,713 & A; J.M. Huber Corp., Headquartered in Houston, TX and Operating Throughout the State of Texas

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,448; Newbold Corp., Rocky Mount, VA: May 28, 2000
TA–W–39,604 & A; Doran Mills, LLC, Shelby, NC and New York, NY: June 20, 2000
TA–W–40,005; SDK Knitting, Inc., Schaefferstown, PA: August 25, 2000
TA–W–40,009; JC Surrey 2001, Inc., Leander, TX: August 24, 2000
TA–W–40,078; Guilford Mills, Pine Grove, PA: September 9, 2000
TA–W–40,181; BASF Corp., Rensselaer, NY: June 19, 2001
TA–W–40,276; Dorel Juvenile Group, Inc., Formerly Cosco, Inc., St. Smith, AZ: October 8, 2000
TA–W–40,294; Fairfield Glove and Textile Col, Inc., Cherryville, NC: October 10, 2000
TA–W–40,325; Covington Industries, Inc., Calhoun Falls, SC: November 9, 2000
TA–W–40,379; HC Contracting, Inc., New York, NY: October 31, 2000
TA–W–40,454; Biltwell Clothing Co., Rector Sportswear, Rector, AR November 9, 2000
TA–W–39,374; Signature Cloth, Clifton, NJ: May 18, 2000
TA–W–39,793; Fourth Edition, Inc., Terre Hill, PA: July 30, 2000

TA–W–39,832; Fiskars Consumer Products, Inc., Wausau, WI: July 26, 2000
TA–W–39,952; MJM Knitwear Corp., Brooklyn, NY: August 16, 2000
TA–W–40,279; C & C Fashions, Inc., Bronx, NY: October 2, 2000
TA–W–40,365; Hyde Inc., Bangor, ME: November 11, 2000
TA–W–40,371; Regal Rugs, Inc., A Subsidiary of Spring Industries, Inc., North Vernon, IN: November 1, 2000

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) or (4) were not met. Imports from Canada or Mexico did not contribute importantly to worker's separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04460; National Starch and Chemical Co., Meredosia, IL
NAFTA–TAA–05159; Colorgraphic Offset Printing Co., Lancaster, NY
NAFTA–TAA–05191; Chiquita Processed Foods LLC, Eugene, OR
NAFTA–TAA–05375; Shasta Paper Co., Anderson, CA
NAFTA–TAA–05482; Texfi Industries, Inc., Rocky Mount Plant, Rocky Mount, NC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–5151; Fiskars Consumer Products, Inc., Wausau, WI: July 26, 2000
NAFTA–TAA–05324; Honeywell, Inc., Clearfield, UT: September 10, 2000
NAFTA–TAA–05427; Richmond Technology, An Illinois Tool Works Co., Redland, CA: October 8, 2000
NAFTA–TAA–05531; Regal Rugs, Inc., A Subsidiary of Spring Industries, Inc., North Vernon, IN
NAFTA–TAA–5609 & A; Key Industries, Buffalo, MO and Nevada, MO: December 5, 2000
NAFTA–TAA–05137; Kemet Electronics Corp., Greenwood Plant, Greenwood, SC, A; Mauldin Plant, Simpsonville, SC, B; Simpsonville Plant, Simpsonville, SC and C; Fountain Inn Plant, Fountain Inn, SC: July 23, 2000
NAFTA–TAA–05357; Linq Industrial Fabrics, Inc., Marino Technologies Div., Opalocka, FL: September 18, 2000
NAFTA–TAA–055883; Weavexx, A Xerium Co., Greenville, TN: November 27, 2000
NAFTA–TAA–05214; Horton, Inc., Britton, SD: June 29, 2000

I hereby certify that the aforementioned determinations were issued during the month of January, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 15, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1784 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,557]

Midwest Garment Co., Chesterfield, Missouri; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 14, 2002, in response to a worker petition which was filed by the company on behalf of workers at Midwest Garment Company, Chesterfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1783 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 4, 2002.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 4, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 12/17/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,429	Onkyo America (Co.)	Columbus, IN	11/30/2001	Automotive Speakers.
40,430	Vesuvius USA (Co.)	Cleveland, OH	11/05/2001	Hot and Cold Rolled Steel.
40,431	ACME Steel (Wkrs)	Riverdale, IL	11/28/2001	Hot Rolled Steel.
40,432	Phoenix Finishing (Co.)	Gaffney, SC	11/01/2001	Finished Broadwoven Fabrics.
40,433	Olin Brass (Co.)	Indianapolis, IN	11/09/2001	Brass and Copper Alloys.
40,434	Imperial Carbide (Co.)	Meadville, PA	11/29/2001	Machine Parts, Die Parts, Die and Molds.
40,435	Telaxrs Communications (Wkrs)	So. Deerfield, MA	11/04/2001	Communication Products.
40,436	Dometic Corp.(Co.)	LaGrange, IN	11/12/2001	R/V Air Conditioners.
40,437	Thomas Henshall Silk (UNITE)	Paterson, NJ	9/27/2001	Finished Textile Fabrics.
40,438	Appleton Papers (Co.)	Camp Hill, PA	10/31/2001	Carbonless Paper.
40,439	Communication Associates (Wkrs)	Anniston, AL	11/14/2001	Power Magnetics.
40,440	Cardinal Brands, Inc (Wkrs)	Washington, MO	10/22/2001	Desk Folders Business Bags.
40,441	Road Machinery Co. (Wkrs)	Bayard, NM	12/03/2001	Heavy Road Machinery.
40,442	Case New Holland Global (Co.)	Burlington, IA	12/06/2001	Self-Propelled Backhoes, Bulldozers.
40,443	James Hamilton Constructi (Co.)	Silver City, NM	12/07/2001	Copper.
40,444	Purcel Tire (Co.)	Silver City, NM	12/03/2001	Mining Tires.
40,445	Composidie (Wkrs)	Apollo, PA	11/05/2001	High Speed Progressive Dies and Tolling.
40,446A	Value Line Textiles, Inc (Co.)	Lenoir City, TN	10/31/2001	Socks.
40,446	Value Line Textiles (Co.)	Pilot Mountain, NC	10/31/2001	Socks.
40,447	SCI, Inc. (Wkrs)	Lynchburg, VA	11/01/2001	Cellular Phones.
40,448	Metalloy Corp. (Wkrs)	Hudson, MI	11/15/2001	Truck Parts.
40,449	Clebert's Hosiery Mill (Co.)	Connelly Spring, NC	11/07/2001	Men's and Ladies' Socks.
40,450	A.O. Smith Electrical (Wkrs)	Lexington, TN	11/28/2001	Electric Motors.
40,451	Modern Prototype (Co.)	Troy, MI	11/02/2001	Automotive Prototype Parts.
40,452	N and H Corporation (Co.)	Mohnton, PA	11/06/2001	T-Shirt, Shorts and Lingerie.
40,453	Penley Corporation (Co.)	West Paris, ME	12/06/2001	Wooden Spring Clothes Pens.
40,454	Biltwell Clothing Co. (Co.)	Ractor, AR	11/09/2001	Men's Tailored Pants.
40,455	Phelps Dodge Bagdad (Co.)	Bagdad, AZ	11/13/2001	Copper—Mining and Milling.
40,456	Magnequench International (UAW)	Anderson, IN	12/07/2001	Magnets and Magnetic Power.

[FR Doc. 02–1774 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,750]

Portex Technologies, College Point, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Portex Technologies, College Point, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,750; Portex Technologies College Point, New York (November 1, 2001)

Signed at Washington, DC this 16th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1785 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 15, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade

Adjustment Assistance, at the address shown below, not later than February 4, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC this 21st day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 12/21/2001

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,457	Trane Company (IAMAW)	La Crosse, WI	10/10/2001	Air conditioning equipment.
40,458	Handler Textile—Duro (Co.)	Stone Mountain, GA	10/24/2001	Textile processing.
40,459	Ispat Inland, Inc. (Co.)	East Chicago, IL	12/13/2001	Cold rolled flat steel.
40,460	Radax Industries (Wrks)	Webster, NY	10/22/2001	Hex socket set screws.
40,461	Daishowa American Co. Ltd (Wrks)	Port Angeles, WA	12/10/2001	Alder chips.
40,462	Vishay Vitramon (Co.)	Roanoke, VA	12/12/2001	Ceramic capacitors.
40,463	Dunham-Bush, Inc. (Co.)	Harrisonburg, VA	10/31/2001	Heating and air haulders equipment.
40,464	Low Cost Manufacturing (Wrks)	Utica, NY	10/08/2001	Customer replacement units.
40,465	Hershey Foods Corp (Wrks)	Pennsburg, PA	11/29/2001	Hershey's Pot of Gold Candies.
40,466	Precision Cable Assemblie (Wrks)	Longansport, IN	12/14/2001	Wire harnesses—cables.
40,467	Gold Seam (Wrks)	Passaic, NJ	10/30/2001	Ladies' blouses.
40,468	DT Magnetics Int'l (Wrks)	Dover, NH	10/22/2001	Power transformers.
40,469	Kellogg Crankshaft Co (Union)	Jackson, MI	11/15/2001	Automobile crankshaft.
40,470	RBN Manufacturing, Inc. (Co.)	Dothan, AL	11/09/2001	Boxer shorts, knit tops.
40,471	FCI USA, Inc. (Wrks)	Cypress, CA	10/23/2001	Data and telecommunications.
40,472	Romart, Inc. (UNITE)	Scranton, PA	10/24/2001	Men's dress and sport coats.
40,473	Marlan Tool, Inc. (Wrks)	Meadville, PA	10/31/2001	Design molds—plastic parts.
40,474	Acme Steel Co (USWA)	Chicago, IL	10/26/2001	Steel coils.
40,475	Quality Tool and Die (Wrks)	Meadville, PA	11/16/2001	Mold and die tooling.
40,476	A.S. Haight (UNITE)	Cartersville, GA	11/19/2001	Screen printing cloth.
40,477	Precision Tool and Die (Wrks)	Louisville, KY	11/16/2001	Tooling and die components.
40,478	Dimension Carbide, Inc. (Co.)	Guys Mills, PA	11/15/2001	Custom form grinding.
40,479	Gategourmet Unit 498 (Wrks)	Charlotte, NC	11/06/2001	Food for airlines.
40,480	Flambeau Micro (Co.)	Sun Prairie, WI	10/25/2001	Motorola cell phone components.
40,481	Artex International (Co.)	Highland, IL	10/20/2001	Table linens—airline, restaurants.
40,482	Bridgestone/Firestone (USWA)	Russellville, AR	10/19/2001	Inner tubes.
40,483	Sumitomo Electric Wiring (Co.)	Morgantown, KY	12/12/2001	Electric wiring harnesses.
40,484	Bristol Compressors, Inc (Co.)	Sparta, NC	10/22/2001	Compressors for air conditioning.
40,485	Dyersburg Corp. (Co.)	Charlotte, NC	12/11/2001	Yarn dye and piece dye knit fabric.
40,486	LSI Logic (Wrks)	Santa Clara, CA	11/07/2001	Wafer fabrication.
40,487	Atlanta Manufacturing (Wrks)	Norcross, GA	10/22/2001	Cable television electronic headware.
40,488	Sunbrand (Wrks)	Norcross, GA	11/05/2001	Sell & distribution of equipment.
40,489	Empire Iron Mining (Co.)	Palmer, MI	11/30/2001	Iron ore.
40,490	Schmalbach-Lubeca Plastic (Wrks)	Erie, PA	10/23/2001	Metal mold base assemblies.
40,491	Wesley Industries, Inc (Co.)	New Haven, MI	11/20/2001	Gray iron OEM automotive parts.
40,492	Coastal Lumber Co (Wrks)	Suffolk, VA	12/04/2001	Wood products.
40,493	Kaiser Aluminum Corp (USWA)	Tacoma, WA	11/09/2001	Aluminum products.
40,494	Accuride International (Co.)	So. Bend, IN	12/17/2001	Linear slides.
40,495	Galey and Lord Services (Wrks)	Eagle Pass, TX	11/30/2001	Men's and ladies' pants.

[FR Doc. 02–1773 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05634]

A.O. Smith, Electrical Products Co., Scottsville, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 11, 2001, in response to a petition filed by a company official on behalf of workers at A.O. Smith Electrical Products Company, Scottsville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1786 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American

Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than February 4, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than February 4, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Chemical Lime (Co)	Douglas, AZ	12/12/2001	NAFTA–5,685	Lime (calcium oxide).
Road Machinery—Phelps Dodge Chino (Wkrs).	Bayard, NM	12/31/2001	NAFTA–5,686	Machine parts.
Valhoma Corp.—Nexus Management (Wkrs).	Tulsa, OK	12/28/2001	NAFTA–5,687	Horse holters.
Greenwood Mills—Liberty Mfg. (Co.)	Liberty, SC	12/28/2001	NAFTA–5,688	Finished denim fabric.
Knitcraft (Co.)	Belmont, NC	01/02/2002	NAFTA–5,689	Unfinished knit goods.
Titan Plastic Group—Plastic Engineered (Wkrs).	El Paso, TX	01/02/2002	NAFTA–5,690	Plastic injection molded parts.
International Paper (PACE)	Menasha, WI	11/13/2001	NAFTA–5,691	Silicon coated substrate.
Emerson Electric—Alco Controls (Co.).	Hazlehurst, GA	12/28/2001	NAFTA–5,692	Refrigeration filter driers.
Braeco (Co.)	Marshall, NC	12/31/2001	NAFTA–5,693	Tee shirts and shorts.
King Press (Co.)	Joplin, MO	12/28/2001	NAFTA–5,694	Printing presses.
B.B. Walker Co. and Bender Shoe Co. (Co.).	Asheboro, NC	12/27/2001	NAFTA–5,695	Western boots, work shoes.
Pittsburgh Gear (USWA)	Pittsburgh, PA	12/28/2001	NAFTA–5,696	Gears and transmissions.
R.B. and W Corp. (USWA)	Coraoplis, PA	12/28/2001	NAFTA–5,697	Fasterns for automotive.
Leech Tool and Die Works (Wkrs)	Meadville, PA	12/28/2001	NAFTA–5,698	Tool and dies (molds).
Applied Concepts (Wkrs)	Warrendale, PA	12/28/2001	NAFTA–5,699	Hand tools.
Hein Werner—Snap On (Co.)	Baraboo, WI	01/03/2002	NAFTA–5,700	Collision repair equipment.
Treno Technologies (Wkrs)	Round Rock, TX	01/04/2002	NAFTA–5,701	Plastic and sheetmetal computer cases.
Meridian Automotive Systems (Wkrs)	Portland, OR	01/02/2002	NAFTA–5,702	Rigs.
ITT Industries (Wkrs)	Newton, MA	01/07/2002	NAFTA–5,703	Switches.
Odetics, Inc. (Co.)	Anaheim, CA	12/07/2001	NAFTA–5,704	Viedo surveilance recorder.
Denso Sales California (Co.)	Long Beach, CA	11/10/2001	NAFTA–5,705	Automotive tube, hoses, air conditioning.
Clearwater Forest Industries (Co.)	Kooskia, ID	01/03/2002	NAFTA–5,706	Dimensional lumber.
Hunter Sadler—Lanier Clothes (Co.)	Tupelo, MS	01/04/2002	NAFTA–5,707	Clothing.
Seco Warwick Corporation (Co.)	Meadville, PA	01/11/2002	NAFTA–5,708	Industrial heat treating equipment.
Precision Twist Drill (Wkr)	Rhinelander, WI	12/20/2001	NAFTA–5,709	Twist drill bits.
Rockwell Collins (Co.)	Pomona, CA	01/07/2002	NAFTA–5,710	In flight entertainment system.
FCI USA (Wkrs)	Emigsville, PA	01/11/2002	NAFTA–5,711	Electrical connectors.
Crown, Corky and Seal Pakaging (Wkrs).	So. Connellsville, PA	01/11/2002	NAFTA–5,712	Plastical lined closures.
Borg Warner Automotive (Wkrs)	Coldwater, MI	01/08/2002	NAFTA–5,713	Automotive transmission components.
Artex International (Wkrs)	Highland, IL	01/08/2002	NAFTA–5,714	Table linens (napkins & tablecloths).
Bilco Manufacturing (Co.)	Macon, GA	01/09/2002	NAFTA–5,715	Wooden shell rolls.
VF Jeanswear (Wkrs)	Prague, OK	01/08/2002	NAFTA–5,716	Jeans and causalwear.
National Oilwell (Wkrs)	McAlester, OK	01/08/2002	NAFTA–5,717	Pumps.
Iris Graphics—A Creo Co. (Co.)	Billerila, MA	01/07/2002	NAFTA–5,718	Proofing products.
Monona Wire (Co.)	Livington, WI	01/09/2001	NAFTA–5,719	Wiring harnesses for medical.
Hershey Chocolate and Confectionery (Wkrs).	Wheatridge, CO	12/13/2001	NAFTA–5,720	Hard candy.
Steelcase (Wkrs)	Fletcher, NC	01/10/2002	NAFTA–5,721	Wood.
Siemens Energy and Automation (Co.).	Osceola, IA	01/04/2002	NAFTA–5,722	Elevator starters.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Screen Creations (Wkrs)	O'Fallon, MO	01/10/2002	NAFTA–5,723	T-shirts.
Credence Systems (Wkrs)	Hillsboro, OR	11/09/2001	NAFTA–5,724	Automative test equipment.
Inoac Packaging Group (Co.)	Leitchfield, KY	01/10/2002	NAFTA–5,725	Plastic bottle decoration.
Agere Systems (Co.)	Breingsville, PA	01/14/2002	NAFTA–5,726	Optic devices.
Burlington Industries (Wkrs)	Cordova, NC	01/08/2002	NAFTA–5,727	Synthetic fabrics.
Quality Metal Products (Co.)	Bessener City, NC	01/14/2002	NAFTA–5,728	Fabricated truck parts.
M.S. Chambers and Son (Co.)	Baltic, CT		NAFTA–5,729	Gravure print cylinders.
SDS Lumber (Co.)	Bingan, WA	01/14/2002	NAFTA–5,730	Plywood.
Hammond Power Solutions (Co.)	Baraboo, WI	01/14/2002	NAFTA–5,731	Transformers.
New Era Textile Parts (Co.)	Gastonia, NC	01/11/2002	NAFTA–5,732	Card screens and card plates.
Charmilles Technologies (Wkrs)	Owosso, MI	01/11/2002	NAFTA–5,733	Electrical discharge machinery.
Emerson (Co.)	Oxford, MS	01/08/2002	NAFTA–5,734	Fractional horse power motor.

[FR Doc. 02–1781 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04606]

Collis, Inc., Elizabethtown, Kentucky; Notice of Revised Determination on Reconsideration

On December 17, 2001, the Department, issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on August 8, 2001, because criteria (3) and (4) of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. There was no company imports from Canada or Mexico, nor was production shifted from the subject facility to Mexico or Canada.

New information received by the Department shows that a meaningful portion of plant production was shifted to Mexico during the relevant period. The workers at the subject plant were engaged in employment related to the production of residential refrigerator shelves and were not separately identifiable by product line.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Collis, Inc., Elizabethtown, Kentucky who became totally or partially separated from employment on or after February 16, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 14th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1778 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5418]

CTI Audio, Inc., Conneaut, Ohio; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 11, 2001, in response to a petition filed by a company official, on behalf of workers at CTI Audio, Inc., Conneaut, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1772 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Nafta–05208]

Dunlap Sales, Inc.; Hopkinsville, Kentucky; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Dunlap Sales, Inc., Hopkinsville, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–05208; Dunlap Sales, Inc. Hopkinsville, Kentucky (January 3, 2002)

Signed at Washington, DC this 10th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1776 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05329]

Emerson Process Management, Formerly Fisher Controls Regulator Division, McKinney, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for NAFTA Transitional

Adjustment Assistance on November 19, 2001, applicable to workers of Emerson Process Management, Regulator Division, McKinney, Texas. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63262).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of regulators for gas pipelines.

New findings show that the Department incorrectly identified the subject firm name. The Department is amending this certification determination to correctly identify the subject firm title name to read Emerson Process Management, formerly Fisher Controls, Regulator Division.

The intent of the Department's certification is to include all workers of Emerson Process Management, formerly Fisher Controls, Regulator Division, McKinney, Texas who were adversely affected by layoffs, declines in sales and production and a shift in production of regulators for gas pipelines to Mexico.

The amended notice applicable to NAFTA–05329 is hereby issued as follows:

All workers of Emerson Process Management, formerly Fisher Controls, Regulator Division, McKinney, Texas, who became totally or partially separated from employment on or after September 11, 2000, through November 19, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1779 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04636]

Freightliner LLC Truck Manufacturing and Parts Plant, Portland, Oregon; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 19, 2001, applicable to workers of Freightliner LLC, Truck Manufacturing Plant, Portland, Oregon. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63262).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medium and heavy-duty trucks.

New information shows that the Department incorrectly identified the subject firm name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read Freightliner LLC, Truck Manufacturing and Parts Plant.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Freightliner LLC, Truck Manufacturing and Parts Plant, Portland, Oregon, who were adversely affected by a shift in production of medium and heavy-duty trucks to Mexico.

The amended notice applicable to NAFTA—04636 is hereby issued as follows:

All workers of Freightliner, LLC, Truck Manufacturing and Parts Plant, Portland, Oregon, who became totally or partially separated from employment on or after March 9, 2000, through November 19, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1780 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5219]

Henry Manufacturing, Swat Fame, City of Industry, Los Angeles, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 16, 2001, in response to a petition which was filed on behalf of workers at Henry Manufacturing, Swat Fame, City of Industry, Los Angeles, California.

The U.S. Department of Labor was unable to locate an official of the company to obtain the information necessary to render a decision.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1777 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5602]

Intervet, Inc., Gainesville Facility; Gainesville, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on December 4, 2001, in response to a worker petition which was filed by the company on behalf of workers at Intervet, Inc., Gainesville Facility, Gainesville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1775 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5622]

Lexmark International, Lexington, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment

assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on December 5, 2001, in response to a worker petition which was filed by the company on behalf of workers at Lexmark International, Lexington, Kentucky.

The investigation revealed that on January 5, 2001, workers of the subject firm were certified eligible to apply for NAFTA–TAA under petition number NAFTA–4314, which does not expire until January 5, 2003.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1782 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5439]

Midwest Garment Co., Chesterfield, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on October 17, 2001, in response to a worker petition which was filed by the company on behalf of workers at Midwest Garment Company, Chesterfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1787 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Nicholson, Personnel Officer, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). P.J. Winzer, who will serve as Chair, and Barbara Wade have been appointed as new members. John Seal, Clyde B. Blandford, Jr., and Robert Lawshe will continue to serve as members of the PRB.

Dated: January 17, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02–1676 Filed 1–23–02; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Evaluation of Credit Union Non-Maturity Deposits; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: NCUA is soliciting public comment on a study by National Economic Research Associates (n/e/r/a), titled ''The Evaluation of Credit Union Non-Maturity Deposits.'' NCUA intends to consider whether to use the study to prepare examiner guidance on the appropriate treatment of these instruments in the assessment of interest rate risk.

DATES: Comments must be received on or before April 24, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Jeremy Taylor, Senior Investment Officer, Office of Investment Services, at the above address or telephone (703) 518–6620; or Dan Gordon, Senior Investment Officer, Office of Investment Services, at the above address or telephone (703) 518–6620.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA commissioned n/e/r/a, an economics-consulting firm, to complete a study of methods to value non-maturity shares. The study has been completed and is available following the text of this Request for Comments on the NCUA website at *http://www.ncua.gov/news/draftboardactions/BAM-01-12-13-6.pdf.* Alternatively, to get to the study from the NCUA website (*www.ncua.gov*), select News, then Proposed Rules, then select on the page that follows, Request for Comments ''The Evaluation of Credit Union Non-Maturity Deposits.'' It can also be obtained in hard copy by requesting it from the Office of Public and Congressional Affairs, 1775 Duke Street, Alexandria, Virginia, 22314–3428, telephone number (703) 518–6330.

NCUA believes the majority of credit unions would not be affected by the results of the n/e/r/a study, either because their interest rate risk profile is limited, or because they treat shares at par value for interest rate risk measurement purposes. This study will be most relevant to those institutions that assume non-maturity shares materially mitigate the risk of a high level of long-term assets.

Non-maturity shares include share drafts, regular shares and money market share accounts. Non-maturity shares may provide mitigation of interest rate risk to the extent they are a stable, low cost source of funds. Non-maturity shares have uncertain cash flows. This is because they have no contractual maturity and the dividends are set by the credit unions. Therefore, in interest rate risk assessment, credit unions must make assumptions on these cash flows.

NCUA in its asset liability review questionnaire provides guidance to examiners in establishing a scope for their review of a credit union's asset liability management (ALM), including assessment of interest rate risk. However, the questionnaire does not provide a framework for examiner review of non-maturity share assumptions.

The n/e/r/a study contains a comprehensive review of the literature

on valuing non-maturity deposits. It provides a conceptual evaluation of alternative methods, with an analysis of the costs and benefits of these methods. The study discusses implementation issues for NCUA and credit unions, and provides recommendations for the most suitable valuation approaches to meet NCUA and credit union needs. The study proposes effective maturities that may reasonably be used for credit union shares where the cash flows are not explicitly documented and modeled by the credit union. The study proposes a method to value these shares, and discusses the appropriate discount rate for these funds. The characteristics of credit union shares, and their differences from bank depository funds, are included in the discussion. Recommendations are also provided where credit unions analyze their cash flows from these shares.

The n/e/r/a study may be useful in evaluating net economic value (NEV) analysis. NEV analysis measures the potential effect of changes in interest rates on net economic value (NEV). NEV means the fair value of assets minus the fair value of liabilities. Valuation techniques used to estimate fair values require assumptions about maturities and interest rates to calculate the present value of cash flows of non-maturity shares. As with gap analysis and review of income simulation models, examiners judge whether these assumptions are reasonable.

B. Areas for Comment

When its analysis of the n/e/r/a study is completed, NCUA will likely use the conclusions to provide guidance for examiner ALM scope determination and evaluation of credit union interest rate risk models and consider what should be the next stage in the evaluation of these issues. NCUA desires to identify reasonable methods for assumptions, valuation techniques and estimated values for non-maturity shares.

NCUA is soliciting comments on the study. Specifically, the agency is interested in comment on the following issues.

(1) Provide specific comments on the study. If there are points with which you disagree or you believe are incorrect, provide both the specific citations in the study and the support for your conclusion.

(2) NCUA is considering establishing a ''safe harbor'' for non-maturity share assumptions, such as a maturity of 1.0 year for money market shares, 2.5 years for regular shares, and 3.0 years for share drafts. Examiners would judge these, or shorter, terms to be acceptable maturity assumptions for non-maturity shares. Please comment on whether this approach is reasonable.

(3) The characteristics of a non-maturity account, not its labeling, are important determinates of value. For example, two credit unions may have accounts labeled regular shares: the first credit union may rarely change the interest rate; in contrast, the second may reset the rate frequently, similar to a money market share account at the first credit union. What documentation, if any, would be appropriate to use ''safe harbor'' assumptions?

(4) A credit union might choose to use its own empirical analysis to demonstrate a risk mitigation value larger than a ''safe harbor'' assumption. NCUA examiners would expect a statistically valid empirical analysis to justify such values. Should NCUA use the validation guidelines addressed in Chapter VIII of the report? If not, please provide alternative guidelines you believe are appropriate and provide evidence to support your recommendation.

(5) Is there background information from sources other than those covered in the n/e/r/a study that NCUA should consider? Please indicate the source of the information and the results. If possible, provide complete copies of the studies or the analysis.

(6) NCUA is contemplating whether to conduct an empirical study of credit union non-maturity share behavior. Please provide specific recommendations on what should be included in such a study.

(7) Are there other considerations in the valuation of shares, beyond those discussed in the n/e/r/a study, which should be taken into account?

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1682 Filed 1–23–02; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–344 and 72–17]

Portland General Electric Company Trojan Nuclear Plant and Trojan Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Application Regarding Proposed Acquisition of Portland General Electric Company by Northwest Natural Holdco and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the indirect transfer of Facility Operating License No. NPF–1 for the Trojan Nuclear Plant (TNP or Trojan) and Materials License No. SNM–2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI) to the extent currently held by Portland General Electric Company (PGE), as part owner and licensed operator of TNP and the Trojan ISFSI.

According to an application for approval filed by PGE, Northwest Natural Holdco (NW Natural Holdco) has entered into an agreement to purchase all of the common stock of PGE from Enron Corporation (Enron). PGE, currently a wholly-owned subsidiary of Enron, would become a wholly-owned subsidiary of NW Natural Holdco, thereby effecting an indirect transfer of the TNP and Trojan ISFSI licenses, to the extent held by PGE, to NW Natural Holdco. No physical or operational changes are being proposed to TNP or the Trojan ISFSI in the application. No direct transfer of the licenses for TNP or the Trojan ISFSI would result from the change in ownership of PGE. PacifiCorp and the Eugene Water and Electric Board (EWEB), the other co-owners of TNP and the Trojan ISFSI, are not involved in the purchase of PGE, and the licenses as held by PacifiCorp and EWEB are not presently subject to any proposed transfer.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effectuating the indirect tranfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 13, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance

with the Commission's rules of practice set forth in 10 CFR part 2, subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.'' In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas R. Nichols, Esq., General Counsel, Portland General Electric Company, Suite 1700, 121 SW Salmon Street, Portland, Oregon 97204 (telephone number 503–464–8402); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 25, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 6, 2001, available for public inspection at the Commission's Public Document Room (PDR), 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*. 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, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, MD, this 17th day of January, 2002.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1720 Filed 1–23–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25370; (812–12654)]

Harbor Fund and Harbor Capital Advisors, Inc.; Notice of Application

January 16, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') to amend a prior order that granted an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order amending a prior order (the ''Prior Order'') that permits them to enter into and materially amend sub-advisory agreements without shareholder approval.[1]

Applicants: Harbor Fund (the ''Trust'') and Harbor Capital Advisors, Inc. (the ''New Adviser'').

FILING DATE: The application was filed on October 4, 2001 and amended on January 14, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: One SeaGate, Toledo, Ohio 43666.

FOR FURTHER INFORMATION CONTACT: Jean Minarick, Senior Counsel, at (202) 942–0527 or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. The Trust is an open-end management investment company currently composed of thirteen series (''Funds'').[2] The New Adviser, a wholly owned subsidiary of Robeco Groep, N.V., acts as investment adviser to the Trust and has the responsibility, subject to oversight by the board of trustees of the Trust (''Board'') to oversee the selection of investment sub-advisers (''Portfolio Managers'') which it selects and to recommend to the Trust's Board their hiring, termination and replacement. The New Adviser is registered under the Investment Advisers Act of 1940.

2. On October 21, 1997, the Trust and its prior investment adviser, then a wholly owned subsidiary of Owens-Illinois, Inc. (the ''Prior Adviser''), received the Prior Order permitting the Trust and the Prior Adviser to enter into and materially amend sub-advisory agreements (''Sub-Advisory Agreements'') for the Funds without obtaining shareholder approval.

[1] *Harbor Fund and Harbor Capital Advisors, Inc.*, Investment Company Act Release Nos. 22832 (Sept. 25, 1997) (notice) and 22863 (Oct. 21, 1997) (order).

[2] Applicants request that any relief granted also apply to any future series of the Trust and any other registered open-end management investment company or series thereof (a) that are advised by the New Adviser or any entity controlling, controlled by or under common control with the New Adviser, and (b) that use the management structure described in the application (''Future Funds,'' and together with the Funds, the ''Funds.'') Any Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The trust is the only existing open-end management investment company that currently intends to rely on the order. No Fund will have in its name the name of a Portfolio Manager, as defined below.

Applicants seek to amend the Prior Order to permit the New Adviser to enter into and materially amend Sub-Advisory Agreements for the Funds without obtaining shareholder approval. Except for the identity of the parent company, the New Adviser and the Prior Adviser are substantially similar in all material respects. The entire management team of the Prior Adviser has continued in their same capacities with the New Adviser. All key employees of the Prior Adviser have continued their employment with the New Adviser. Applicants also seek to modify condition 6 to the Prior Order to conform with recent precedent.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that amending the Prior Order as requested would be consistent with the standards of section 6(c) of the Act. The New Adviser employs the same manager-of-managers investment management approach as did the Prior Adviser and similarly holds itself out to the public as an investment adviser whose strength, experience and expertise lies in its ability to evaluate, select and oversee those Portfolio Managers who can add the most value to a shareholder's investment in a Fund. While the New Adviser is a new legal entity, its experience in operating as a manager-of-managers comes from the experience of its management and staff, all of whom were previously employed by the Prior Adviser.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of the Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the New Adviser has the ultimate responsibility to oversee Portfolio Managers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be persons each of whom is not an ''interested person'' (as defined in section 2(a)(19) of the Act) (the ''Disinterested Trustees''), and the nomination of new or additional Disinterested Trustees will be at the discretion of the then-existing Disinterested Trustees.

4. The New Adviser will not enter into a Sub-Advisory Agreement with any Portfolio Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust, the New Adviser or the Funds, other than by reason of serving as a Portfolio Manager to one or more of the Funds (the ''Affiliated Portfolio Manager'') without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the New Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, the New Adviser will furnish the shareholders of the affected Fund with all information about a new Portfolio Manager that would be contained in a proxy statement. This information will include any change in such disclosure caused by the addition of a new Portfolio Manager. The New Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The New Adviser will provide general management services to each Fund, including overall oversight responsibility for the general management and investment of each Fund's securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Portfolio Managers; (c) when appropriate, recommend to the Board the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (d) monitor and evaluate the performance of Portfolio Managers, including their compliance with the Fund's investment objectives, policies and restrictions; and (e) implement procedures to ensure that the Portfolio Managers comply with the Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of the New Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Portfolio Manager except for: (a) Ownership of interests in the New Adviser or any entity that controls, is controlled by, or is under common control with the New Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by, or is under common control with a Portfolio Manager.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1698 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45282; File No. SR–CHX–2001–30]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 21, 2001, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule, effective through June 30, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria described below. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to change its fee schedule to provide for assessment of a marketing fee of $.01 per share applicable to ''Subject Transactions''[3] in ''Subject Issues'' [4] occurring on or before June 30, 2002. The marketing fee would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently imposes a marketing fee under a provision of the CHX fee schedule that, by its term, would expire on December 31, 2001.[5] Under the system in place until December 31, 2001, the CHX calculates, bills, and collects the marketing fee and then remits the proceeds to the specialist firm that trades the Subject issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment for order flow arrangements relating to the Subject Issue, or in certain instances, to market makers who have contributed to market share growth. The CHX has also issued quarterly refunds of unspent marketing fee proceeds to market makers, floor brokers, and specialists, on a *pro rata* basis, for amounts in excess of $1,000.

The CHX is currently proposing to: (a) Extend the marketing fee provision until June 30, 2002; (b) modify the definition of Subject Issue to exclude issues other than ETFs' (c) revise the definition of Subject Transaction to include any trade with a customer where the order is delivered to the CHX via the MAX system; and (d) revise procedures to preclude assessment of the marketing fee against specialists in the case of transactions where market makers are exercising their entitlement rights under CHX rules.

The CHX states that the continued imposition of the marketing fee is intended to allocate equitably the financial burden of seeking order flow for Subject Issues. Prior to the establishment of the current fees program, according to the CHX, a CHX specialist trading a particular Subject Issue was the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as any licensing fees that the licensor of the product imposes.[6] The CHX also notes that, prior to the implementation of the current program, CHX market makers that participated in transactions in Subject Issues did not share any of these costs.

By extending the current payment for order flow program, the proposed rule change would continue to allow a specialist trading a Subject Issue to impose the marketing fee in instances where the specialist believes that it would be appropriate to allocate the financial burden of trading the Subject Issue among all those who trade it, including the specialist and market makers. The CHX believes that the proposed rule change will continue to provide specialist trading Subject Issues with sufficient incentive to continued their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act[7] in that it would provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change From Members, Participants or Others

The CHX neither solicited nor received written comments with respect to the proposed rule change.

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

[3] ''Subject Transaction'' means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] ''Subject Issue'' means any issue which constitutes an exchange-traded fund (''ETF'') and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (9b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10).

[6] Under the proposed rule change, the marketing fee would be assessed only against ETF products, which almost always have an associated licensing fee.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–30 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1702 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45300; File No. SR–NASD–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc.; To Amend NASD Code of Procedure Rule 9522

January 17, 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 January 4, 2002, 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 (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On January 11, 2002, NASD Regulation amended the proposal.[3] NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Code of Procedure Rule 9522, Initiation of Eligibility Proceeding; Member Regulation Consideration, to describe in the Rule the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(2)(A) No change.

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h–1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.]*;or*

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

* * * * *

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 its proposal and discussed any comments it received regarding the proposal. 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 proposes to amend Rule 9522 to expressly describe in the Rule those instances in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC–400 application in those cases in which the disqualifying event is excepted from the ''full'' notice requirements of Rule 19h–1 under the Act,[6] but where a ''short form'' notification to the SEC under Rule 19h–1 is still required.[7] The proposed rule change provides a complete description, within Rule 9522, of those cases in which the disqualifying event permits ''short form'' notification to the SEC under Rule 19h–1.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules 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.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 11, 2002 letter from Sarah J. Williams, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, NASD Regulation provided its rationale for waiver of the 30-day operative delay. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–(f)(6). The 60-day abrogation period runs from January 11, 2002, the date that NASD Regulation filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). NASD Regulation asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay.

[6] 17 CFR 240.19h–1.

[7] *See* Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (SR–NASD–99–76) at 48269.

[8] 15 U.S.C. 78o–3(b)(6).

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

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.

NASD Regulation has asked that the Commission waive the 5-day pre-filing notice requirement and accelerate the operative date. The Commission finds good cause to do so, because such designation is consistent with the protection of investors and the public interest. Rule 9522, in its current form, does not provide a full description of the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. Because the proposed rule change would amend Rule 9522 to provide a complete description of those cases in which the disqualifying event requires ''short form'' notification to the SEC under Rule 19h–1, the Commission finds waiver of the pre-filing notice requirement and operative delay is consistent with the protection of investors and the public interest. For these reasons, the Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period to allow the proposed rule change to be both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submission should refer to file number SR–NASD–2002–02 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1699 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that, should cases arise where approval of an MC–400 application for relief from NASD eligibility requirements does not reasonably fall within the scope of Rule 9522 as amended by this proposed rule change, the NASD must file a proposed rule change to amend the Rule.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45283; File No. SR–NASD–2001–84]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 by the National Association of Securities Dealers, Inc. To Change the Description of the Market Capitalization Listing Standard to Market Value of Listed Securities

January 15, 2002.

I. Introduction

On November 14, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change to modify the description of the market capitalization listing standard to market value of listed securities. Nasdaq is also proposing to provide a definition of the term ''listed securities'' in Nasdaq's Marketplace Rules.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal. On December 18, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

II. Description

The Exchange has proposed to amend the description of the market capitalization listing standard to market value of listed securities. One of the standards under which issuers can qualify for listing on The Nasdaq National Market (''National Market'') is to have a market capitalization of at least $75,000,000. Issuers may also qualify for continued inclusion on the National Market with at least $50,000,000 in market capitalization. The minimum market capitalization standards for initial and continued inclusion on The Nasdaq SmallCap

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45116 (November 28, 2001), 66 FR 63275 (December 5, 2001).

[4] *See* Letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 17, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the proposed rule change become effective on June 1, 2002.

Market are $50,000,000 and $35,000,000, respectively.

For purposes of initial listing eligibility, Nasdaq has historically interpreted the term market capitalization to include only the value of listed securities. In connection with continued listing eligibility, however, Nasdaq has also considered market capitalization to include classes of non-redeemable convertible preferred stock, provided that the conversion price was ''in the money.'' According to Nasdaq, this approach has created uncertainty among issuers and investors as to the definition and application of the market capitalization listing standard. In addition, Nasdaq's Marketplace Rules do not define market capitalization and Nasdaq believes that this term may be thought to include more than just the value of listed securities or non-redeemable convertible preferred stock that is in the money.

Accordingly, Nasdaq is amending the description of the market capitalization listing standard so that it is based on the market value of listed securities. In conjunction with this change, Nasdaq also is adding a definition of the term ''listed securities'' to Nasdaq's Marketplace Rules. Nasdaq believes that these modifications will clarify for issuers and investors that initial and continued listing eligibility will be based only upon the value of an issuer's securities that are quoted on Nasdaq or listed on a national securities exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] In particular, the Commission believes that the proposal is consistent with the requirements of sections 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules are 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.

The Commission believes that the rule change should clarify the standards under which issuers can qualify for listing on the National Market. In particular, the rule change should clarify for issuers and investors that initial and continued listing eligibility will be based only upon the value of an issuer's securities that are quoted on Nasdaq or listed on a national securities exchange.

IV. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, Nasdaq notified the Commission that in order to minimize the impact of the proposed rule change on existing issuers, the rule will go into effect on June 1, 2002. The Commission believes that this is a suitable delay to allow issuers listed on the National Market to become informed of the rule change and prepare accordingly. Therefore, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.[7]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–84 and should be submitted by February 14, 2002.

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2001–84) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1703 Filed 1–23–02; 8:45 am]

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[5] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(2) and (6).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No 34–45285; File No. SR–NASD–2001–93]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Fees Associated With the Nasdaq Application of the Primex Auction System™

January 15, 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 17, 2001, the National Association of Securities Dealers, Inc., (''NASD'' or ''Association'') through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. Nasdaq will not assess fees pursuant to this fee schedule for approximately the first three months after the Nasdaq application of the Primex Auction System (''Primex'' or ''System'') is operational.[3] Nasdaq intends to begin assessing fees pursuant to this fee schedule beginning on April 1, 2002. However, Nasdaq will issue a Head Trader Alert to notify users of the exact date it will begin assessing fees. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As described above, Nasdaq will not assess any fees pursuant to the fee schedule during the initial few months the System is operating, which also means Nasdaq will not share any transaction fees in accordance with the fee schedule during such period. However, Primex Trading N.A., L.L.C., an entity independent of Nasdaq and the licensor of the System, has indicated it will pay any revenue sharing amounts earned by participants during such period.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish the fee schedule for Nasdaq's application of the Primex Auction System.™ Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(q) No changes.

(r) Nasdaq Application of the Primex Auction System™

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) *Transaction Charges:*	
Execution Services—for all participants:	
Order entry	*No fee.*
*Auction Response (per share, per execution—$5.00 maximum).**	*$.01.*
Matching Rights—Primex Auction Market Markers (PAMMs) only:	
50 Percent Match	*No fee*
*Two-Cent Match (per share, per retained order—$2.50 Maximum.*****	*$.0025.*
Revenue Sharing—PAMMs only:	
*Each order executed:****	*1/3 of traction fee.*
(2) Monthly Access fees:	
Software:	
Workstation license or unique logon:	*Per workstation logon:*
Stations/logons 1–10	*$200.*
Stations/logons 11–25	*$100.*
Stations/logons 26 and above	*$50.*
Proprietary interface license:	*Per license:*
API specification	*$500.*
FIX (customized protocol)	*$500.*
Network:	
Dedicated line:	*Per line:*
256K primary with backup	*$1,564.*
Installation/Uninstall	*$1,000 per Nasdaq Staff site visit.*

* This fee applies to both Indications and ''real-time'' Responses. When two orders match directly, a fee is charged to the party that entered the second order.

** This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

*** Paid to PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a quarterly basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 17, 2001, Nasdaq filed a Form PILOT to commence operation of the Primex System.[4] The System is designed to replicate, in an electronic form, the competitive trading crowd that is associated with an auction market. The System is completely voluntary and available to any NASD member in good standing. Non-NASD members can access the System through an NASD member that subscribes to Primex. Members that desire access to the System must execute the necessary agreements with Nasdaq. Members granted access to the System are referred to as Participants. There are two types of Participants in Primex: (1) Crowd Participants, and (2) Primex Auction Market Makers (''PAMMs'').

By becoming a Participant, members automatically receive the right to trade as Crowd Participants. Crowd Participants can view all orders exposed in the System; interact with any order put to auction by responding to the auction using all of the System's response tools; submit orders to be auctioned; and trade as principal, agent, or riskless principal. Crowd Participants can interact with orders being auctioned by submitting Indications, which are instructions to the System that can reside within the System and automatically respond in a certain manner to an auction if and when orders put to auction are available, or by submitting a Response. A Response is an individual instruction that is entered and responds in ''real time'' to orders being auctioned. A firm that elects to register as a PAMM has the same rights and entitlements as Crowd Participants, but because they elect to meet other additional qualifications,[5] PAMMs are entitled to additional privileges. For example, PAMMs are entitled to use the System's automated Match Parameters allowing them to participate in the execution of their own customer orders submitted to the System (*e.g.,* the Two Cent Match Parameter or the 50% Match Parameter[6]). PAMMs also are entitled to

[4] The Form PILOT was amended on November 26, 2001. *See* Letter from Peter R. Geraghty, Associate General Counsel, Nasdaq, to John Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated November 26, 2001.

[5] The requirements to become and maintain registration as a PAMM are contained in NASD Rule 5020. In general, a PAMM for a particular security eligible for trading in the System must be either: (1) A Nasdaq market maker in the security, if the security is listed on Nasdaq; or (2) a Consolidated Quotation System market maker, if the security is listed on an exchange. PAMMs may retain their PAMM status for a prospective calendar quarter provided they had qualified by submitting to the System a minimum percentage of certain order-types in the previous calendar quarter, as detailed in NASD Rule 5020. There never is any requirement for participants to register as a PAMM or to submit any amount of orders at any time.

[6] A complete description of the matching parameters and their operation are contained in NASD Rule 5014. Generally, however, when a PAMM submits an order to the System with the 50% Match parameter, the order will be executed

revenue sharing, allowing PAMMs to share in the transaction fee paid by other participants when such participants execute against an order submitted to auction by a PAMM.

Nasdaq will impose monthly fees to access the System. These fees vary based on the method chosen by the Participant to access the System. The System will operate on a network that is independent from Nasdaq's other existing systems (*e.g.,* SuperSoes℠). Primex Participants will be charged a monthly fee for this independent network. In addition, Participants will be charged for each visit by Nasdaq staff to install, or uninstall, software or hardware necessary to access the System.

In addition to monthly charges, Nasdaq will impose fees based on orders executed through the System. As set forth in the schedule of fees, no fee is charged for submitting an order to auction, and in general no fee is charged to have such orders executed.[7] Execution fees are only charged against Participants that extract liquidity by responding to, and executing against, orders submitted for auction. This execution fee is a penny per share with a maximum charge of $5.00 per execution. Accordingly, the fee would be charged to a Participant for any execution resulting from that Participant's Indication or real-time Response that interacted with an order put to auction.

In addition, and as discussed above, PAMMs have the option of attaching certain matching rights on orders they submit to the System. Nasdaq will impose a fee when a PAMM utilizes the Two-Cent Match feature and retains an order for execution. In such circumstances, the PAMM will be charged $.0025 per share, with a $2.50 maximum per retained order. If the PAMM does not retain the order because the order is executed against the Crowd Participant(s) who has offered more that two cents of price improvement, there is no charge to the PAMM. Instead, Nasdaq will share with the PAMM one-third of the transaction fee collected for such transaction. Nasdaq has decided to share the transaction fee in these circumstances to encourage PAMMS to submit orders for auction in the System. The revenue sharing amounts will be paid on a quarterly basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act[8] in that the proposed fees provide for the equitable allocation of reasonable fees among members. The fees apply equally to all Participants in the System, based upon the category the member has chosen to participate in the System. All members in the same category of Participant (*e.g.,* PAMM) are subject to the same fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] in that it establishes the fee schedule for the use of a Nasdaq system.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–2001–93 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1705 Filed 1–23–02; 8:45 am]

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against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the System to provide the order with an additional execution of like size and price against the PAMM that entered the order.

[7] The one exception is where an order submitted to auction directly meets and interacts with another order submitted to auction, in which case the second order is treated as a Response, and is charged a fee accordingly.

[8] 15 U.S.C. 78k–1(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45301; File No. SR–PCX–2001–45]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Inactive Lessors' Eligibility To Serve on the Board of Governors

January 17, 2002

On December 7, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article III, Section 2(b) of the PCX Constitution and PCX Rule 1.1(h) to provide for the eligibility of inactive lessors to serve on the PCX Board of Governors (''Board'').

The proposed rule change was published for comment in the **Federal Register** on December 17, 2001.[3] The Commission notes that the proposed rule change was noticed for a 15-day comment period, and the Commission received no comments regarding the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45144 (December 10, 2001), 66 FR 65015.

Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal to clearly establish that PXC inactive lessors are eligible to serve on the PCX Board is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principals of trade and to protect investors and the public interest. Inactive lessors have a financial interest in the activities of the Board and the Exchange due to their ownership of an Exchange membership. The Commission finds that allowing inactive lessors to serve on the Board is a fair and reasonable practice to provide inactive lessors and their interests to be represented on the Board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PCX–2001–45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1741 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45295; File No. SR–Phlx–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a PACE Order Execution and Price Protection Pilot Program

January 16, 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 January 8, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange field this proposal under section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] order execution and price protection pilot program (''pilot''). The pilot, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates decimal pricing into two PACE provisions—immediate execution of certain market orders through the Public Order Exposure System (''POES'') and mandatory double-up/double-down price protection for equities trading in decimals. The pilot has been in effect since August 25, 2000.[6] The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[7] in general, and in particular, with section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day prefiling notice requirement, and the 30-day operative delay.

[5] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] The pilot was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). The pilot has been extended several times, most recently through January 14, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); and 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102). The price improvement portion of the pilot program (Supplementary Material .07(c)(i) to Rule 229) has been replaced by a price improvement pilot program with an automatic price improvement feature based on decimal trading, including a percentage of the spread between the bid and the offer. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001)(SR–Phlx–2001–12).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number SR–Phlx–2002–03, and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1700 Filed 1–23–02; 8:45 am]

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[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45288; File No. SR–Phlx–2001–107]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Interim Intermarket Linkage Program

January 16, 2002.

On November 29, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to extend the pilot program authorizing implementation of ''interim linkages'' with the other options exchanges until April 1, 2002.[3]

The proposed rule change was published for comment in the **Federal Register** on December 12, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change should enable investors effecting transactions on the Phlx to obtain better prices displayed on the other exchanges and therefore is consistent with the objects of section 6(b)(5) under the Act[7] which requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–2001–107) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1701 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

[3] On May 16, 2001, the Commission issued a notice of filing and immediate effectiveness of a pilot program submitted by the Phlx authorizing the implementation of an interim linkage. *See* Securities Exchange Act Release No. 44311, 66 FR 28768 (May 24, 2001).

[4] *See* Securities Exchange Act Release No. 45132 (December 5, 2001), 66 FR 64330.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 16 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45289; File No. SR–Phlx–2001–117]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase to the Exchange Technology Fee

January 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to increase its technology fee applicable to all members and foreign currency options participants not also holding legal title to a Phlx membership from the current charge of $100.00 per month to $150.00 per month. The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange charges a monthly technology fee on its members and foreign currency options participants that are not also holding legal title to a Phlx membership. This charge of $100.00 per month was instituted in March of 1997 at the rate of $100.00 to cover system software modifications, specific systems development (maintenance) costs, increased costs associated with the Securities Industry Automation Corporation, and the Options Price Reporting Authority communication changes and ongoing system maintenance charges.[3] Over the four and one half years since the technology fee was instituted, the complexity and expansion of the software and hardware, such as LANs, servers, and communications systems (both wireless and hardwired/tethered) has increased to serve the membership and the investing public. The Exchange's Board believes an increase to the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology on the trading floors to facilitate trading.

The technology fee was instituted to capture costs associated with system development costs associated with new risk management systems, order handling rule revisions, specialized quote feeds, and new products. Over the past four plus years, the Exchange's software and hardware systems have grown in order to process increased trading, resulting in more systems maintenance costs. The proposed increase in the technology fee is necessary to allow the Exchange to continue to operate its automated systems and compete with the other market centers in offering new technology features to facilitate trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] as establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[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 filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–117 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1704 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[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).

DEPARTMENT OF STATE

[Public Notice 3890]

30-Day Notice of Proposed Information Collection: Proposal Submission Instructions: Department of State Forms DS–2011, DS–2012, DS–2013, DS–2014, DS–2015, DS–2016, DS–2017, and DS–2018 (OMB Control #1405–0115)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a currently approved collection.

Originating Office: ECA–IIP/EX.

Title of Information Collection: Proposal Submission Instructions (PSI).

Frequency: 40 times a year (average), coincidental with Request for Grant Proposal competitions published in the **Federal Register**.

Form Number: DS–2011, DS–2012, DS–2013, DS–2014, DS–2015, DS–2016, DS–2017, DS–2018.

Respondents: Public and private non-profit organizations meeting the provisions described in IRS Code section 26 USC 501(c)(3).

Estimated Number of Respondents: Approximately 800 proposals will be submitted to the Bureau annually, accompanied by the Proposal Submission Instructions (PSI).

Average Hours Per Response: 20 hours per response.

Total Estimated Burden: 14,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from ECA–IIP/EX/PM, 301 4th Street, SW, (202) 619–5416, U.S. Department of State, Washington, DC 20547. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: November 29, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1803 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3894]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection: Form DS–11, Application for Passport/Registration (OMB Control #1405–0004)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, without change, of previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Application for Passport/Registration.

Frequency: On Occasion.

Form Number: DS–11.

Respondents: Individuals or Households.

Estimated Number of Respondents: 6.5 million.

Average Hours Per Response: ⅓ hr. (20 minutes).

Total Estimated Burden: 2,166,666 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW, Room H904, Washington, D.C. 20522, and at 202–663–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: December 20, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–1805 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3895]

Culturally Significant Objects Imported for Exhibition; Determinations: ''The Age of Impressionism: European Masterpieces From Ordrupgaard, Copenhagen''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Age of Impressionism: European Masterpieces from Ordrupgaard, Copenhagen'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Walters Art Museum, Baltimore, MD, from on or about February 17, 2002, through May 26, 2002, the Metropolitan Museum of Art, New York, NY from on or about June 17, 2002, through September 8, 2002, and the Museum of Fine Arts, Houston, TX, from on or about October 6, 2002, through January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: January 17, 2002.

Brian Sexton,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1806 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3896]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Sacred Spaces of Pieter Saenredam''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''The Sacred Spaces of Pieter Saenredam,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about April 16, 2002, to on or about July 7, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: January 17, 2002.

Brian J. Sexton,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1807 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3893]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Three Chinese Entities, Including Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that three Chinese entities have engaged in activities that require the imposition of measures pursuant to section 3 of the Iran Nonproliferation Act of 2000.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: On general issues: Pamela K. Roe, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to sections 2 and 3 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on January 11, 2001, that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

Liyang Chemical Equipment (China) and any successor, sub-unit, or subsidiary thereof.

Q.C. Chen (China).

China Machinery and Electric Equipment Import and Export Company and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons.

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: January 16, 2002.

Vann H. Van Diepen,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–1804 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Consideration of Two Petitions To Alter AGOA Benefits for Canned Pears and Manganese Metal; Notice of Review Timetable and Public Hearings Regarding These Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Trade Policy Staff Committee (TPSC) provides this notice to identify the Harmonized Tariff Schedule of the United States (HTS) numbers of two articles proposed for designation or termination as GSP-eligible articles when imported from African Growth and Opportunity Act (AGOA) beneficiary countries (*see* ANNEX). This notice also sets forth the timetable for public hearings for GSP Subcommittee consideration in reviewing the articles for GSP eligibility, and the procedures for further public comment.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, Room F220, 1724 F Street, NW., Washington, DC 20508. Telephone: (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program grants duty-free treatment to designated eligible articles imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*). The GSP program was implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations. Legislation amending the GSP program to, inter alia, extend GSP benefits to AGOA beneficiaries through September 30, 2008, was signed by the President on May 18, 2000 (19 U.S.C. 2462–67).

In a notice dated April 13, 2001, the United States Trade Representative (USTR) initiated the 2001 GSP Annual Review and announced a deadline of June 13, 2001, for filing petitions (63 FR 1893). The GSP Subcommittee of the TPSC has considered only those petitions involving AGOA benefits; the GSP program remains in effect for AGOA beneficiaries, notwithstanding the expiration of the GSP program for all other beneficiary countries on September 30, 2001.

The Annex to this notice sets forth the case number, U.S. HTS number, change requested and petitioner for each AGOA petition that has been accepted for review.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR part 2007, including sections 2007.0 and 2007.1. All submissions should identify the subject article(s) in terms of the current U.S. HTS nomenclature.

Comments should be submitted, in English, to the Chairman of the GSP Subcommittee by facsimile at (202) 395–9481. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''Business Confidential'' status pursuant to 15 CFR 2003.6, and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains confidential information, a confidential version of the submission also should be submitted. In addition, any document containing confidential information should be clearly marked ''Confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information also should be clearly marked at the top and bottom of every page (either ''Public Version'' or ''Nonconfidential''). Comments should be submitted no later than 5 p.m. on February 20, 2002.

Notice of Public Hearings

Hearings will be held on March 5, 2002, beginning at 10 a.m. at the Office of the United States Trade Representative, Annex, 1724 F Street, NW., Washington, DC 20508. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witnesses representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by a written brief or statement, in English, and should be received by 5 p.m. on February 20, 2002. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted, in English, no later than 5 p.m. on March 2, 2002. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5 p.m. on February 20, 2002, and post-hearing and rebuttal written briefs or statements by March 20, 2002. Comments by interested persons on the U.S. International Trade Commission (USITC) Report prepared as part of the product review should be submitted in English, by 5 p.m. on May 22, 2002.

Jon Rosenbaum,

Assistant USTR for Trade and Development and, Chairman, GSP Subcommittee, Trade Policy Staff Committee.

Annex

Case Number	HTS Subheading	Article	Petitioner
		[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petition to add a product to the list of eligible articles for the Generalized System of Preferences only for countries designated as a beneficiary sub-Saharan African country in general note 16 of the Harmonized Tariff Schedule of the United States (HTS).	
2001-AGOA-1	8111.00.45 pt	Manganese and articles thereof, including waste and scrap: [Waste and scrap] Other: Unwrought manganese: Flake containing at least 99.5% by weight of manganese	Eramet Marietta Inc., Marietta, OH; Manganese Metal Company (Pty) Ltd., South Africa
B.		Petition to remove a product from the list of articles eligible for the Generalized System of Preferences only for countries designated as a beneficiary sub-Saharan African country in general note 16 of the HTS.	
2001-AGOA-2	2008.40.00	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Pears	Northwest Horticultural Council, Yakima, WA; Pacific Northwest Canned Pear Service, Yakima, WA; California Pear Advisory Board, Sacramento, CA; Washington-Oregon Canning Pear Assn., Yakima, WA; Pacific Coast Producers, Lodi, CA; Signature Fruit Co., LLC, San Roman, CA

[FR Doc. 02–1683 Filed 1–23–02; 8:45 am]
BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Abernathy Municipal Airport, Abernathy, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Abernathy Municipal Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Russell, City Manager, at the following address: City of Abernathy, PO Box 310, Abernathy, Texas 79311.

FOR FURTHER INFORMATION CONTACT: Ms. Kimchi Hoang, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5681, e-mail: *Kimchi.Hoang@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Abernathy Municipal Airport under the provisions of the AIR 21.

On January 16, 2002, the FAA determined that the request to release property at Abernathy Municipal Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole on in part, no later than March 31, 2002.

The following is a brief overview of the request:

The City of Abernathy requests the release of 211.355 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The fair market value of the sale is appraised at $31,700 to be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the City Hall of Abernathy, telephone number (806) 298–2546 or at the Texas Department of Transportation, Aviation Division, 125 E. 11th Street, Austin, TX 78701–2483, Ms. Sandra Gaither, telephone number (512) 416–4544.

Issued in Forth Worth, Texas on January 16, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–1769 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Montgomery County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: James A. Cheatham, Division Administrator, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3461 OR Andrew L. Warren, District Administrator, Pennsylvania Department of Transportation, District 6–0, 7000 Geerdes Blvd., King of Prussia, PA 19406, (610) 205–6700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), Montgomery County, Chester County, Upper Marion Township, Norristown Borough, Bridgeport Borough, West Norriton Township, Lower Providence Township, Tredyffrin Township, Schuylkill Township and the Delaware Valley Regional Planning Commission will prepare and Environmental Impact Statement (EIS) to identify and evaluate alternatives for modifications to the US Route 23 corridor in Montgomery County, Pennsylvania. The proposed action would consider improvements in the following study area: north of the Schuylkill River to include Tropper Road (PA 363), Egypt Road and Main Street (Ridge Pike); west to US 422 and including the Valley Forge National Park; south along US 202 and east along US 202 and the Dannehower Bridge.

Included in the overall project will be the identification of a range of alternatives that meet the identified project needs, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is included as part of the project.

Documentation of the need for the project is being prepared. This process will identify the need for roadway improvements through the study area based on local and regional transportation demand, transportation system linkage and continuity, geometric criteria, highway safety, and local and regional community planning.

Alternatives that will be considered may include, but will not be limited to: No Build; Transportation Systems Management (TSM); upgrade existing PA 23 facility; construction on new alignment; upgrade of existing roadway network adjacent to, and supplementing PA 23 corridor traffic; and mass transit infrastructure upgrades and increased service. These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comment or questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: October 23, 2001.

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA

[FR Doc. 02–1696 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation and Notice of Cancellation

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses. The license listed below was not revoked; it was cancelled due to death of the license holder.

Name	License	Port Name
Isidore Cohen	01668	New York

December 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–1788 Filed 1–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Revocation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs broker license revocation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19

CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

Name	License	Port
Unimex Brokerage, Inc.	12585	El Paso

Dated: December 20, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–1789 Filed 1–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before March 25, 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 form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849.

Abstract: Sections 6402, 6404, sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit or interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governsments.

Estimated Number of Respondents: 125,292.

Estimated Time Per Respondent: 14 hours, 42 minutes.

Estimated Total Annual Burden Hours: 1,841,954.

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 14, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1679 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8838

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8838, Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

DATES: Written comments should be received on or before March 25, 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 form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

OMB Number: 1545–1395.

Form Number: 8838.

Abstract: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Current Actions: There are no changes being made to the Form 8838 at this time.

Type of Review: Extension of a current approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1000.

Estimated Time Per Respondent: 8 hrs., 14 min.

Estimated Total Annual Burden Hours: 8,440.

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 16, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1680 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12196

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12196, Small Business Office Order Blank.

DATES: Written comments should be received on or before March 25, 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 form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Small Business Office Order Blank.

OMB Number: 1545–1638.

Form Number: Form 12196.

Abstract: Form 12196 is used by Small Business Information and Development Centers and One-Stop Capital Shops to order IRS tax forms and publications for distribution to their clients. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

Current Actions: Form 12196 is used primarily by the Small Business Administration's Business Information Centers (BlCs) to order key IRS small business products. Last year, the IRS expanded the availability of the form to the Small Business Development Centers (SBDCs) and the Women Business Centers (WBCs) to order key IRS small business products that will benefit new small business owners/operators. Additional products were added to the form to expand distribution and increase availability of selected IRS educational products to new business start-ups.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2.

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 14, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1681 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This

notice solicits comments for information needed to determine insured's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0120'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment by Attending Physician, VA FL 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from attending physician to determine the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: January 11, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1736 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0496]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0496.''

SUPPLEMENTARY INFORMATION:

Title: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

OMB Control Number: 2900–0496.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide the information needed to authorize payment of the insurance. The information is used to process the mortgage holder's claim.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at pages 57156–57157.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0496'' in any correspondence.

Dated: January 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1737 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0095.''

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant's eligibility for VA pension benefits is determined, in part, by countable income. VA Form 21–

4165 is used to develop the necessary income and asset information peculiar to farm operations. The information is used to determine whether the claimant is eligible for VA benefits. If eligibility exists, the information is used to determine the proper rate of benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at pages 57155–57156.

Affected Public: Individuals or households, and Farms.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0095'' in any correspondence.

Dated: January 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1738 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–81, Work Coordination. (This Clause will be renumbered as ''Alternate 1'' to VAAR Clause 852.236–80.)

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Supplement 1 (which will be renamed as ''Alternate 1'').

d. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Supplement 1 (which will be renamed as ''Alternate 1'').

e. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information is necessary for VA to administer construction contracts and to carry out its responsibility to construct, maintain and repair real property for VA.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at page 54342.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 4,802 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,311.

Estimated Number of Total Respondents: 3,534.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

Dated: January 11, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1739 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held February 7 and 8, 2002. This will be a regularly scheduled meeting for the purpose of reviewing the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m., and adjourn at 4:30 p.m.

The agenda for Thursday, February 7, will include a review of the activities and reported conclusions of the Under Secretary for Health (USH) Special Committee on PTSD. The Committee will also review areas of potential partnership with the USH's Committee regarding the effective treatment of traumatic stress disorders in veterans exposed to war-zone stressors while on active duty in the military.

On Friday, February 8, the Committee will review VA's activities in response to the terrorist attack against the World Trade Center in New York City. The Committee's focus will be on veterans' mental health needs in the wake of such attacks, VA's timely response to the readjustment needs of new eras of veterans engaged in the war against terrorism, and VA's role in homeland security and local community-based disaster response.

The agenda for both days will also include strategic planning sessions to formulate goals and objectives for the Committee field visit to VA facilities planned for later in the year. In addition, the Committee will formulate recommendations for inclusion in its annual report to Congress.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting may contact Alfonso R. Batres, Ph.D., M.S.S.W., Chief Readjustment Counseling Officer, Department of Veterans Affairs Headquarters Office at (202) 283–8967.

Dated: January 14, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–1740 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register
Vol. 67, No. 16
Thursday, January 24, 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

Food Safety and Inspection Service

[Docket No. 01–020N]

Applied Epidemiology and Other Vital Public Health Tools To Inform Food Safety Actions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a two-day public meeting on the use of epidemiological data, principles, and techniques, and other public health tools to help the Agency achieve its public health goals. The Agency will describe its use of epidemiology and other public health tools in outbreak investigations and in in-plant environmental assessments, present hypothetical scenarios, and invite discussion and comment on its approach. This meeting is intended to be the first in a series of meetings that will aid FSIS in developing a framework for how the Agency will conduct public health investigations, and how it will integrate the scientific principles of applied epidemiology into its food safety activities. The long-term goal is to arrive at a consensus on how and when these tools should be used.

DATES: The public meeting is scheduled for January 29 and 30, 2002. The meeting will be from 8:30 a.m. to approximately 4 p.m. each day. A tentative agenda is available in the FSIS Docket Room and on the FSIS website at *http://fsis.usda.gov.*

ADDRESSES: The meeting will be held at the Holiday Inn Select Atlanta/Decatur, 130 Clairemont Avenue in Decatur, GA; telephone (404) 371–0204. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Clerk, Docket #01–020N, 102 Cotton Annex, Washington, DC 20250–3700. All comments and the official transcript, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gioglio at (202) 205–0256. Registration for the meeting will be on-site. If a sign language interpreter or other special accommodation is necessary, contact Ms. Mary Harris as soon as possible at (202) 690–6497.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic or foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

In recent years, the Agency has placed increased emphasis on its public health protection role. Throughout the 1990's, the Agency's most important goal was an improved food safety inspection system, exemplified by the Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) regulations which are now fully implemented. FSIS has consistently sought to enhance the public health by minimizing foodborne illness from meat, poultry, and egg products. The Agency has worked toward achieving this goal by implementing measures intended to reduce pathogens on raw products, by strengthening relationships with public health agencies at the Federal and State levels, by making food safety information and training available to people at every point in the food production and marketing chain, and by promoting international cooperation in food safety.

The Agency's Strategic Plan for 2000–2005 proposes that FSIS continue to focus its operations and resources on food safety and continue to strengthen the scientific basis for its regulatory activities and initiatives.

FSIS would like the views, suggestions, and comments of all of its food safety constituencies, including the general public, on the approaches it has been using, and on how it should continue to use applied epidemiology and other public health tools to achieve its mission. For many years, FSIS has used epidemiology and other methods as tools in tracking the source of outbreaks of foodborne illness. On several occasions, FSIS has based a recall request or a regulatory action on epidemiological data that indicated that product from a particular establishment is adulterated, but without a positive laboratory finding. Recent improvements in the technology of outbreak investigation and genetic fingerprinting of pathogens from persons and food products have resulted in significant changes. It is now possible to identify otherwise unrecognized outbreaks and to provide substantive evidence to link products to illnesses. The Agency has begun using the techniques of epidemiology during in-plant assessments to help identify the source of on-going plant contamination.

Public Meeting

At the public meeting, FSIS officials will discuss the use of applied epidemiology and other public health tools in foodborne illness outbreak investigations and their application to in-plant assessments and regulatory decisions, including whether to request a recall of FSIS regulated products. The first day of the meeting will focus on foodborne illness outbreaks; the second day will focus on in-plant applications of epidemiological principles and approaches and other tools. During the meeting, FSIS officials will discuss the Agency's public health approach to foodborne illness outbreaks and in-plant assessments. FSIS officials will discuss the role of epidemiology and other public health tools in outbreak investigations and recall decisions, and the use of epidemiological data, principles, and investigative and other techniques in conducting in-plant environmental assessments to prevent foodborne illness. The Agency also will present its current thinking on approaches that integrate epidemiological principles and techniques into inspection methods and activities. Hypothetical scenarios based on recent cases of foodborne illnesses and in-plant contamination will be presented by Agency personnel to discussion panels of food safety experts.

Finally, the Agency will open the discussion to include, and solicit comment from, the attendees. FSIS believes that this type of public process will assist it in achieving its goals and will enhance the understanding of the public health community.

Additional Public Information

Public awareness of all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and others that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 17, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–1750 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–044N]

Codex Alimentarius Commission: Fifth Session of the Codex Committee on Milk and Milk Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and the Department of Health and Human Services (DHHS), are sponsoring a public meeting on March 20, 2002, to review the technical content of the agenda item documents and receive comments on all issues coming before the Fifth Session of the Codex Committee on Milk and Milk Products, which will be held in Wellington, New Zealand, April 2–8, 2002.

DATES: The public meeting is scheduled for Wednesday, March 20, 2002, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3501, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250.

To receive copies of documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Room, U.S. Department of Agriculture, FSIS, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also become accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/Codex.* Send comments, in triplicate, to the FSIS Docket Room and reference Docket #01–044N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex; Telephone: (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration and correctly labeled.

The Codex Committee on Milk and Milk Products was established to elaborate codes and standards for Milk and Milk Products. The Government of New Zealand hosts this committee and will chair the committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex committees

2. Review of the Proposed Draft and Draft Revised Standards: Cream; Fermented Milk Products; Dairy Spreads; Processed Cheese; Individual Cheeses; and Whey Powders

3. Proposed Standards for Products in Which Milkfat is Substituted for by Vegetable Fat

4. Model Export Certificate for Milk Products

5. Review of Proposals for New Standards for ''Parmesan'' and ''Cheese Specialities''

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 18, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–1749 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on March 7, 2002 at Bureau of Land Management, 355 Hemsted Drive, Redding, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held March 7, 2002.

ADDRESSES: The meeting will be held in the Conference Room at the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 17, 2002.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 02–1715 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forest's Eastern Idaho Resource Advisory Committee will meet Wednesday, February 13, 2002 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on February 13, 2002 from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Quality Inn, 850 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on February 13, begins at 10 am, at the Quality Inn, 850 Lindsay Boulevard, Idaho Falls, Idaho. Agenda topics will include FACA overview, Charter overview, Process for project identification/recommendation, election of Chairperson, operating guidelines, and establishment of future meeting schedule.

Dated: January 26, 2002.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 02–1716 Filed 1–23–02; 8:45 am]

BILLING CODE 3410–11–M

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in Washington, DC.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On Thursday, February 7, 2002, the Council will hold a Business Meeting from 9:30 a.m.–10:30 a.m. Eastern Standard Time (EST) to discuss the final recommendation of the Council for a restructured and rationalized national intercity rail passenger system. Following the Business Meeting, the Council will hold a press conference from 10:30 a.m. to 12:30 p.m.

During its most recent Council meeting, held on January 11, 2002, the Council discussed four options for restructuring Amtrak. A majority of the Council (eight in favor and one opposed) voted to approve the basic elements for a restructuring plan. Under the Council's proposal, the National Railroad Passenger Corporation (NRPC), which has been commonly referred to as Amtrak, would be reconfigured as a small federal program management agency that would control the passenger rail franchise rights, define funding requirements for train operations and infrastructure needs, secure funding from the Congress, and oversee the performance of the system. The reorganization of the NRPC would be completed, in principal part, by putting its train operations into one subsidiary and its real property infrastructure into another. Once the reorganization is in place, the NRPC could introduce competition into the national rail passenger system by permitting other train operating companies, along with Amtrak, to compete for the right to operate a particular route or routes under contract. The NRPC could also exercise its franchise authority to operate passenger trains at the request of a state or an interstate compact.

On November 9, 2001, the Amtrak Reform Council approved a resolution finding that Amtrak would not achieve operational self-sufficiency by December 2, 2002, as required by the Amtrak Reform and Accountability Act of 1997. The Council's finding started a 90-day clock in which the Council must submit an action plan for to Congress.

DATES: The Business Meeting will be held on Thursday, February 7, 2002, from 9:30 a.m.–10:30 a.m. EST, followed by a press conference from 10:30 a.m. to 12:30 p.m. The event is open to the public.

ADDRESSES: The Business Meeting will take place in the Ballroom in the Phoenix Park Hotel at 580 N. Capitol Street, NW, Washington, DC 20001. The nearest Metro stop is Union Station on the Red Line. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's Finding Resolution, the ARC's Proposed Four Options for Restructuring Amtrak, the ARC's two Annual Reports, information about ARC Council Members and staff, and more, you can also visit the Council's Web site at *www.amtrakreformcouncil.gov.*

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the

Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—January 15, 2002.

Thomas A. Till,

Executive Director.

[FR Doc. 02–1695 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–846)

Notice of Court Decision: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 27, 2001, the United States Court of International Trade issued a final judgment with respect to the litigation in Nippon Steel Corp. v. United States, Consol. Ct. No. 99–08–00466. Slip Op. 01–152 (''Nippon IV''). This case arises out of the Department's Notice of Final Determination of Sales at Less Than Fair Value: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999). The final judgment in this case was not in harmony with the Department's May, 1999, Final Determination.

DATES: The effective date of this notice is January 6, 2002, which is 10 days from the date on which the judgment of the Court was issued.

FOR FURTHER INFORMATION CONTACT: Sean Carey at (202) 482–3964 or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department. of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The decision of the Court of International Trade in Nippon IV is that Court's final decision in a series of decisions addressing issues related to the antidumping margin assigned to Nippon Steel Corporation (''Nippon'') in the above–referenced Final Determination.

In Nippon Steel Corp. v. United States (''Nippon I''), 118 F. Supp. 2d 1366 (CIT 2000), that Court (1) remanded for Commerce to determine whether, as to weight conversion factors, Nippon acted to the best of its ability within the meaning of 19 U.S.C. § 1677e(b); (2) ordered Commerce to issue a policy statement on ex–parte memoranda in accordance with the opinion; and (3) upheld the Department on all other challenged aspects relating to Nippon. In Nippon Steel Corp. v. United States (''Nippon II''), 146 F. Supp. 2d 835 (CIT 2001), the Court (1) found that a revised policy statement as to ex–parte memoranda, 66 FR 16906 (March 28, 2001), complied with the Court's order in Nippon I; but (2) held that Commerce had erred in finding that Nippon did not act to the best of its ability with respect to providing requested weight conversion factors, and that, accordingly, Nippon's failure to timely provide these factors did not warrant an adverse inference in the selection of facts available for the affected sales. Thus, the Nippon II Court remanded for Commerce to recalculate Nippon's margin without using an adverse assumption in that respect. In Nippon Steel Corp. v. United States (''Nippon III''), Slip Op. 01–122 (CIT, October 12, 2001), the Court (1) rejected Nippon's claims that the Department's remand results methodology impermissibly took a different approach from that used in the investigation, but (2) rejected the Department's selection of the non–adverse facts available associated with the missing weight conversion factors, and remanded again for the Department to devise a new approach to the determination of neutral facts available.

In Nippon IV, the Court rejected the ''application'' of the Department's new approach, taking no position on whether it was reasonable as a general matter, and ordered the Department to use Nippon's untimely submitted (proprietary) weight conversion factor. Slip Op. 01–152, at 6–7. As mentioned above, this decision was issued as a final judgement in this case.

In its decision in Timken Co. v. United States, 893 F.2d 337, 341 (Fed. Cir. 1990) (''Timken''), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in Nippon IV on December 27, 2001, constitutes a final decision of that court which is ''not in harmony'' with the Department's final determination of sales at less than fair value. This notice is published in fulfillment of the publication requirements of Timken.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a ''conclusive'' court decision.

January 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1790 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–504

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China

ACTION: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to a request from Shanghai New Star Im/Ex Co., Ltd. (New Star). The review covers the period August 1, 2000 through January 31, 2001.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. (See the ''Preliminary Results of Review'' section of this notice.)

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Javier Barrientos, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312 or (202) 482–2243, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions

effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

The Department published in the Federal Register an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). On February 28, 2001 the Department received, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, a timely request from New Star to conduct a new shipper review of the antidumping duty order on petroleum wax candles from the PRC. On March 28, 2001 the Department published its initiation of this new shipper review for the period August 1, 2000 through January 31, 2001 (66 FR 16903). On August 27, 2001 the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until January 15, 2002 (66 FR 45005).

This new shipper request was made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted–average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non–market–economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. See section 351.214(b)(2) of the Department's regulations.

New Star submitted the information and certifications establishing the effective date on which this company first shipped and entered petroleum wax candles for consumption in the United States, the volume of its shipment, and the date of first sale to an unaffiliated customer in the United States. New Star certified that it was not affiliated with any company which exported petroleum wax candles from the PRC during the POI. In addition, New Star certified that its export activities are not controlled by the central government.

Scope of Review

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; rounds, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the questionnaire responses of both New Star and its U.S. importer, Peak Candles, LLC (Peak Candle). We used standard verification procedures, including on–site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

New Shipper Status

Based on the questionnaire responses received from New Star and Peak Candle, and our verifications thereof, we preliminarily determine that New Star has met the requirements to qualify as a new shipper during the POR. We have determined that the company made its first sale or shipment of subject merchandise to the United States during the POR, that this sale was a *bona fide* sale, and that this company was not affiliated with any exporter or producer that previously shipped to the United States during the POI.

Separate Rates

New Star has requested a separate, company–specific rate. In its questionnaire responses, the company states that it is an independent legal entity.

To establish whether a company operating in a non–market economy (NME) country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company–specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record indicates that New Star's export activities are not controlled by the government. New Star

submitted evidence of its legal right to set prices independently of all government oversight. The business license of the company indicates that it is permitted to engage in the exportation of candles. We find no evidence of *de jure* government control restricting this company's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately–owned companies, such as New Star, and that control over these enterprises rests with the enterprises themselves. The Administrative Regulations of the People's Republic of China Governing the Registration of Enterprises as Legal Persons, issued on June 3, 1988 by the State Council of the PRC, the Company Law of the People's Republic of China, issued on December 29, 1993 by the National People's Congress, the Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons, promulgated by the State Administration for Industry and Commerce on June 13, 1988, and the General Principles of the Civil Law of the People's Republic of China, effective on January 1, 1987, all placed on the record of this review, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045 (November 6, 1995) (Manganese Metal). At verification, we saw that the business license for New Star was granted in accordance with these laws. Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to this firm.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information provided in the questionnaire responses, and reviewed at verification, indicates that the management of New Star is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. New Star has stated that its management is selected by its board of directors and/or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondent concerning purchases of subject merchandise from other suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that New Star is eligible for a separate rate for purposes of this review.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at prices below NV, we compared the United States prices to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For New Star, we based United States price on EP, in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. See, the memorandum entitled Analysis of the Relationship and Treatment of Sale between Shanghai New Star Im/Ex Co., Ltd. (New Star) and Peak Candles, LLC (Peak Candle), January 15, 2002. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight, foreign inland insurance, and international freight expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors–of–production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Review of Petroleum Wax Candles from the People's Republic of China, January 15, 2002 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with numerous other cases involving the PRC, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. See the November 27, 2001 memo from the Office of Policy regarding surrogate country selection for this review and the Factor Values Memo. We valued the factors of production using publicly available information from India. We adjusted the Indian input prices by adding freight expenses to reflect delivered prices. At verification we found that New Star had not reported in its questionnaire responses factor information for several factors, including water, scent, additive and plaster. Because these factors are a relatively minor part of the production process for candles, we gathered information at verification to use as the basis for including these factors in the calculation of NV. Thus, the information gathered at verification for these factors is being used as facts available (FA) in accordance with section 776(a) of the Act and section 351.308 of the Department's regulations.

We valued the factors of production as follows:

To value petroleum wax, we used the average Indian price for paraffin wax derived from rates published in Chemical Weekly for the second quarter 2000 (IIQ00), as found in petitioner's August 17, 2001 Surrogate Value Submission in the 1999–2000 administrative review of Sulfanilic Acid from the PRC. We selected the price quotes from the IIQ00 because that period represents the most recent complete quarter available from that submission. This price was adjusted on a tax–exclusive basis to account for the

Indian excise tax of 16 percent and has been inflated through the POR.

To value wicks, we used the average Indian import price for HTS number 5908 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value color, we used the average Indian import price for HTS numbers 3204.1121 and 3204.1129 from the February 2001 issue of the Monthly Statistics, which includes data for the period April 2000–February 2001. These HTS numbers are for red and pink dyes, which were the colors used by New Star's producer. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value additive (stearic acid), we used the average Indian import price for HTS number 2915.7003 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value scent, we used the average Indian import price for HTS number 3302.9002 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value plaster, we used the average Indian import price for HTS number 2520.2001 from the February 2001 issue of the Monthly Statistics of Foreign Trade of India (Monthly Statistics), which includes data for the period April 2000–February 2001. For this unit value, we divided the total import value, less the value of imports from NME countries, by the total import quantity, less the quantity from NME countries. Since most months from this period overlap with the POR, we did not adjust for inflation or deflation.

To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of ''Steam Coal for Industry'' and ''Electricity for Industry,'' published in the International Energy Agency's publication, Energy Prices and Taxes, First Quarter, 2000. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the company under review, we adjusted these factor values to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data from the April 2000 through February 2001 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics). We did not adjust these prices to reflect inflation to the candles processing season during the POR because most months from this period overlap with the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier of the packing materials and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the distance between the domestic supplier and the factory. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) (Roofing Nails).

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used information reported in the January, 1997 Reserve Bank of India Bulletin, ''Statement 1 – Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group–wise'' of that report for the Indian metals and chemicals (and products thereof) industries.

For labor, we used the PRC regression–based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001. See http://ia.ita.doc.gov/wages/. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2000, International Labour Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

We valued movement expenses as follows:

To value truck freight expenses, we used the average of seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the IFS.

To value inland insurance, we used data available on our website's index of factor values at http://ia.ita.doc.gov/factorv/prc/insuranc.htm. The published rate of Rs. 133.75/mt was inflated through the POR and converted to a per kilogram rate.

To value domestic ocean freight, we used data available on our website's index of factor values at http://ia.ita.doc.gov/factorv/prc/freight.htm. The published rate of $0.17/kg was inflated through the POR.

To value international ocean freight, we used freight quotes from the first administrative and new shipper reviews of crawfish tail meat from the PRC (See Memorandum to the File from Mike Strollo to Maureen Flannery: Ocean Freight Rates for the New Shipper and Administrative Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, dated September 29, 1999). These quotes were the most contemporaneous to the POR that we were able to locate. For additional values, we used freight quotes from Maersk/Sea Land and Transoceanic Shipping Co., Inc. See Memorandum to the File from Scott Lindsay to Maureen Flannery: Ocean Freight Rates for the New Shipper and Administrative Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, dated September 29, 2000). Ocean freight rates from Sea Land Services have been obtained and applied in previous investigations, such as Saccharin from the People's Republic of China, 59 FR 58818 (November 15, 1994), Coumarin from the People's

Republic of China, 59 FR 66895 (December 2, 1994) and Persulfates. All ocean freight surrogate values have been adjusted for inflation through the POR.

Currency Conversion

We made currency conversions pursuant to §351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. See http://ia.ita.doc.gov/exchange/index.html.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ Exporter	Time Period	Margin (*ad valorem*)
New Star	8/1/00–1/31/01	74.20%

Any interested party may request a hearing within 30 days of publication of this notice in accordance with §351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue assessment instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we intend to calculate importer–specific assessment rates for petroleum wax candles from the PRC. We will divide the total dumping margins (calculated as the difference between NV and the United States price) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rate against the entered quantity of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC–wide rate, which is currently 54.21 percent; and (4) for all other non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations 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 antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

January 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1791 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–817, C–351–835, C–427–823, C–580–849]

Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea from January 28, 2002 until no later than February 25, 2002. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam (Argentina and France), at (202) 482–0176; Sean Carey (Brazil), at (202) 482–3964; and Tipten Troidl (the Republic of Korea), at (202) 482–1767, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Extension of Due Date for Preliminary Determinations

On October 18, 2001, the Department of Commerce (''the Department'') initiated the countervailing duty (''CVD'') investigations of certain cold-rolled carbon steel flat products from Argentina, Brazil, France, and the Republic of Korea. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Brazil, France, and the Republic of Korea,* 66 FR 54218 (October 26, 2001). The initial deadline for these preliminary determinations was December 22, 2001. On November 30, 2001, we issued a notice partially extending these preliminary determinations until January 28, 2002. *See Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and the Republic of Korea: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations,* 66 FR 63523 (December 7, 2001) (''*Preliminary Postponement*''). Pursuant to section 703(c)(1)(B) of the Act, we find that, because of the continued, ''extraordinarily complicated'' nature of these investigations, we must extend the preliminary determinations deadline for the full 130 days.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that

(i) The case is extraordinarily complicated by reason of

(I) The number and complexity of the alleged countervailable subsidy practices;

(II) The novelty of the issues presented;

(III) The need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement for extraordinarily complicated cases, it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather, the *specific transactions*, e.g., equity infusions, debt-to-equity conversions, etc., applied under those programs, which are numerous and appropriately categorized as ''practices.'' With respect to the issue of the complexity of the practice, these practices are complex in nature as reflected in the extensive analysis required to address these subsidies. Therefore, we find that each of these four cases is extraordinarily complicated as described below.

Argentina

As stated in the *Preliminary Postponement,* the Argentine investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. Also, in addition to the reasons stated in the *Preliminary Postponement,* the recent political turmoil in Argentina has made it difficult for the Government of Argentina to provide complete responses to the Department's questionnaire.

Brazil

As stated in the *Preliminary Postponement*, the Brazil investigation is extraordinarily complicated because a number of newly alleged countervailable subsidies practices are complex or novel. This continues to be the case. In order to properly analyze these new allegations, the Department has asked several detailed supplemental questions regarding complex tax provisions which will not be due earlier than January 24, 2002. The answers to these questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

France

As stated in the *Preliminary Postponement,* the French investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. In addition, the Department has asked several detailed supplemental questions which were due on January 16, 2002. The answers to the supplemental questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

The Republic of Korea

As stated in the *Preliminary Postponement,* the Korean investigation is extraordinarily complicated because a number of the alleged countervailable subsidies practices are complex or novel. This continues to be the case. In addition, the Department is issuing supplemental questionnaires. The answers to the supplemental questions will require complicated analysis and will be necessary for the Department to make its preliminary determination.

Accordingly, we deem these investigations to be extraordinarily complicated and determine, with regard to the third requirement noted above, that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations for an additional 28 days to no later than February 25, 2002.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 18, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–1792 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 011109273–1273–01]

RIN 0660–XX13

Closing Comment Period on Deployment of Broadband Networks and Advanced Telecommunications

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: On November 19, 2001, the National Telecommunications and Information Administration (NTIA) published a Notice in the **Federal Register** inviting the public to submit comments on broadband deployment in the United States.[1] Interested parties were requested to submit comments in response to the Notice on or before December 19, 2001. Comments received after the December 19, 2001 deadline were received and posted as late-filed comments. As of January 18, 2002, the comment period in this docket is closed. NTIA will no longer accept or place in the record late-filed documents.

DATES: The comment period in this docket is closed as of January 18, 2002.

[1] 66 FR 57941 (2001). The initial Notice contained an incorrect date for the deadline, but a correction was published the following week. *See* 66 FR 59050 (Nov. 26, 2001).

SUPPLEMENTARY INFORMATION:

Background

NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy. NTIA is the principal advisor to the President on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry. The request for comment on the deployment of broadband and advanced services is a part of NTIA's ongoing effort to obtain more information about broadband issues. The comments submitted in this proceeding will be used to assist the Administration in developing a domestic telecommunications policy and NTIA's continuing support for removing obstacles to broadband deployment.

Due to the complexity of the issues in this proceeding and to facilitate a fully developed record, NTIA allowed interested parties to submit comments after the December 19, 2001 deadline. Since that time, NTIA received a substantial number of comments. Effective January 18, 2002, however, NTIA will no longer accept or place in the public record comments in this proceeding.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–1708 Filed 1–23–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB).

The package covers collections of information concerning the public and the management and administration of DOE's government-owned contractor-operated (GOCO) facilities and offsite contractors. The information is used by Departmental management to exercise management oversight with respect to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure the Government has sufficient information to judge the degree to which contractors meet contractual requirements; that public funds are being spent in the manner intended, and that fraud, waste, and abuse are immediately detected and eliminated.

DATES: Written comments and recommendations for the proposed collections of information must be submitted to the OMB Desk Officer, within February 25, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of the Deputy Associate CIO for Architecture Standards & Policy, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, MD 20874–1290.)

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Department's Paperwork Reduction Act Submission should be directed to James Renjilian, Office of the General Counsel (GC–80), U.S. Department of Energy, Washington, DC 20585, (202) 586–1522. Any other information should be directed to Ms. Susan L. Frey, (see above address), by telephone at (301) 903–3666 or e-mail at *Susan.Frey@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) Current OMB No. 1910–0800; (2) Title: Legal Collections Packages; (3) Summary: Request for a three-year extension of the existing clearance; (4) Purpose: This information is required by DOE to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively and to exercise management oversight over DOE M&O contractors of the Department's GOCO facilities, and off-site contractors. (5) Type of Respondents: DOE management and operating contractors and off-site contractors; (6) Estimated Number of Responses: 1,894. Estimated number of Burden Hours: 14,100 .

Statutory Authority: Section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on January 15, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Deputy Associate Architecture Standards & Policy, Office of the Chief Information Officer.

[FR Doc. 02–1742 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management, Environmental Management Advisory Board; Renewal

Pursuant to Sectioin 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board has been renewed for a two-year period beginning on January 18, 2002. The Board will provide advice to the Assistant Secretary for Environmental Management.

The Board provides the Assistant Secretary for Environmental Management with information and strategic advice on corporate issues, with a focus on achieving closure of selected sites by 2006. It recommends options to resolve difficult issues faced in the Environmental Management program including; public and worker health and safety, integration and disposition of waste, regulatory agreements, roles and authorities, risk assessment and cost-benefit analyses, program performance and functionality, and science requirements and applications. Consensus recommendations to the Department of Energy from the Board on programmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the

performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Board may be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on January 17, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–1746 Filed 1–23–02; 8:45 am]

BILLING CODE6450–01–M

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14278]

Chemical Industry of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost shared research and development (R&D) of technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical industry. The research is to address priorities identified by the U.S. chemical industry in Technology Vision 2020: The U.S. Chemical Industry and associated technology roadmaps.

DATES: The issuance date of Solicitation Number DE-PS07-02ID14278 will be on or about January 21, 2002. The deadline for receipt of applications will be approximately on April 24, 2002.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS ''User Guide for Contractors'' can be obtained on the IIPS Homepage and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS__HelpDesk@e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doe.gov.*

SUPPLEMENTARY INFORMATION: Approximately $3 million in federal funds are expected to be available to fund the first 12 months of selected research projects. Subject to the availability of funds, approximately $6 million is planned to fund the remaining years of the projects. DOE anticipates making 6 to 8 cooperative agreement awards, each with a duration of three to five years or less. A minimum of three industrial chemical companies must be involved. Collaborations among industry, university, and National Laboratory participants are encouraged. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 15, 2002.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–1744 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 11, 2002, 6:00 p.m.—12:00 p.m.

ADDRESSES: Public Environmental Information Center, 10995 Hamilton-Cleves Highway, Harrison, OH

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order
6:00–6:15 p.m. Chair's Remarks and Ex Officio Announcements
6:15–6:45 p.m. Current Remediation Issues, Silos, Efficiency Efforts
6:45–7:15 p.m. Site Technology Coordination Group Overview and Update on Alpha Monitor
7:15–7:30 p.m. Break
7:30–8:00 p.m. Progress Tracking Materials
8:00–8:45 p.m. Planning for Public Records Workshop
8:45–9:00 p.m. Public Comment
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on January 18, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1745 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Public Law 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed on or before February 25, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1, 3, 5, 6A, 6Q, 7A, and 20, ''Coal Program Package.''

2. Energy Information Administration.

3. OMB Number 1905–0167.

4. Revision and three-year approval requested—Data currently collected on Forms EIA–3A and EIA–5A will be collected by adding appropriate data elements to Forms EIA–3 and EIA–5, which will allow EIA to drop the annual surveys, EIA–3A and EIA–5A. EIA is adding an additional data element to section J. Mining Location, namely, the datum (or geospatial referencing system) that is used in determining the latitude and longitude locations which will not be held confidential.

5. Mandatory.

6. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

7. Business or other for-profit; Federal Government; State, Local or Tribal Government.

8. 9,247 hours (3,440 respondents × 1.5 responses per year × 1.78 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, January 10, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–1743 Filed 1–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–40–002]

Attala Energy Company, LLC; Notice of Filing

January 17, 2002.

Take notice that on January 14, 2002, Attala Energy Company, LLC submitted for filing substitute pages to its FERC Electric Tariff, Original Volume No. 1, in compliance with the order issued in these dockets on December 19, 2001, 97 FERC ¶ 61,282.

Any person desiring to be heard or to protests such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. 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 Commission's web site 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.

Comment Date: January 24, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1733 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–51–000]

California Electricity Oversight Board, Complainant, v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing L.P., Mirant Delta LLC, Reliant Energy Services, Inc., Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynegy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company LLC, Southern California Edison Company, All Other Public and Non-Public Utilities Who Own or Control Generation in California and Who Sell Through the Markets or Use the Transmission Lines Operated by the California Independent System Operator Corporation, and All Scheduling Coordinators Acting on Behalf of the Above Entities, Respondents; Notice of Complaint

January 17, 2002.

Please take notice that on January 14, 2002, the California Electricity Oversight Board (Board) tendered for filing a Complaint alleging that Respondents are submitting unjust and unreasonable bids for decremental energy in the real-time Supplemental

Energy market operated by the California Independent System Operator Corporation (CAISO) such that the resulting wholesale electricity rates are unjust and unreasonable. The Board urges the Federal Energy Regulatory Commission (Commission) to issue an immediate cease and desist order, to impose a ''must-offer'' obligation on generators to submit to the CAISO marginal cost based decremental bids until demonstrable evidence exists that California's wholesale electricity markets are workably competitive, and to take such other action as the Commission deems appropriate.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 5, 2002. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1730 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–52–000]

Municipal Wholesale Power Group, Complainant, v. Wisconsin Power & Light Company, Respondent; Notice of Complaint

January 17, 2002.

Take notice that on January 16, 2002, Municipal Wholesale Power Group (MWPG) filed a complaint with the Federal Energy Regulatory Commission (Commission) against Wisconsin Power & Light Company (WPL) alleging violations of WPL's Rate Schedule W–3, W–3A, and BP–1, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14.

WPL has been served with a copy of the Complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before February 5, 2002. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1731 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–62–000]

National Fuel Gas Supply Corporation; Notice of Application

January 17, 2002.

Take notice that on January 11, 2002, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP02–62–000 , an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon certain pipeline facilities, located in McKean County, Pennsylvania, 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 be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

National Fuel proposes to abandon approximately 12,354 feet of 16-inch diameter steel pipeline, known as Line C–Maloney Farm, located in Bradford and Foster Townships, McKean County, Pennsylvania. National Fuel states that Line C–Maloney Farm was constructed and placed in service by their predecessor, United Natural Gas Company, in 1947. National Fuel proposes to abandon Line C–Maloney Farm due to the age and condition of the pipeline, and the cost to replace certain deteriorated sections of this pipeline. National Fuel asserts that Line C–Maloney Farm has not been utilized since 1987, but is still maintained in accordance with Department of Transportation Guidelines & Practices. National Fuel avers that in order to continue to meet Department of Transportation standards, Line C–Maloney Farm would require a cathodic protection upgrade at an estimated cost of $106,400.

National Fuel states that it would remove approximately 9,187 feet of 16-inch diameter pipeline, and would abandon approximately 3,167 feet of 16-inch diameter pipeline in place, due to its proximity to residences and areas of steep slopes. National Fuel declares that the abandonment project would begin at a point of interconnection with National Fuel Gas Distribution Corporation at Station T–No. 2593 and extend northwest terminating at the Pennsylvania-New York state line.

National Fuel indicates that since Line C-Maloney Farm has not been utilized since 1987, there will be no abandonment or decrease in service to any customers of National Fuel as a result of the proposed abandonment.

National Fuel states that the estimated cost to abandon the subject facilities is $40,000.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949, or at *reitz@natfuel.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 February 7, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1729 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2928–002]

Progress Ventures, Inc.; Notice of Filing

January 17, 2002.

Take notice that on January 15, 2002, Progress Ventures, Inc. and Progress Genco Ventures, LLC tendered for filing an amendment to its application for authorization to sell power at market-based rates in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: January 24, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1732 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–569–020, *et al.*]

Entergy Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

January 17, 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. Entergy Services, Inc.

[Docket No. ER91–569–020]

Take notice that on January 10, 2002, Entergy Services, Inc., on behalf of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy), submits this status report in response to the Commission's November 20, 2001 Order in the above-captioned docket. A copy of this filing has been served upon the state regulators of the Entergy operating companies.

Comment Date: January 31, 2002.

2. Southern Company Energy Marketing L.P.

[Docket No. ER97–4166–010]

Take notice that on January 10, 2002, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, submitted a Status Report in response to the Commission's directions in the above-referenced dockets.

Comment Date: January 31, 2002.

3. Consumers Energy Company

[Docket No. ER01–1587–004]

Take notice that on January 11, 2002, Consumers Energy Company (Consumers) tendered for filing a corrected page 5 of Exhibit A of the unexecuted agreement filed December 20, 2001 in this docket. The page corrects a typo in the originally filed version. The agreement is to have an effective date of March 21, 2001. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: February 1, 2002.

4. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn, Power Company (Allegheny Power)

[Docket No. ER02–454–003]

Take notice that on January 14, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 371 and Supplement No. 1 to Service Agreement No. 371, which redesignated and corrected First Revised Service Agreement Nos. 364 and 365 under Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date for the Service Agreement and Supplement is January 1, 2002.

Comment Date: February 4, 2002.

5. Wisconsin Power & Light Company

[Docket No. ER02–469–000]

Take notice that on January 11, 2002, Wisconsin Power & Light Company (WPL) filed a Notice of Withdrawal with respect to its rate filing it made in the captioned docket on December 4, 2001. WPL requests that its Notice of Withdrawal be accepted effective as of January 26, 2002.

Comment Date: February 1, 2002.

6. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–756–000]

Take notice that on January 11, 2002, Florida Power Corporation (FPC) tendered for filing a Service Agreement for Short-Term Network Contract Demand Transmission Service with Tampa Electric Company. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of January 1, 2002 for this Service Agreement.

A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: February 1, 2002.

7. Nevada Power Company

[Docket No. ER02–757–000]

Take notice that on January 11, 2002, Nevada Power Company (Nevada Power) tendered for filing a compliance filing in the above-captioned docket pursuant to the Commission's July 31, 1997 omnibus compliance order regarding the filing of transmission service agreements.

Comment Date: February 1, 2002.

8. Orange and Rockland Utilities, Inc., New York Independent System Operator, Inc.

[Docket No. ER02–758–000]

Take notice that on January 11, 2002 Orange and Rockland Utilities, Inc. (O&R) submitted for approval to the Commission modifications to certain O&R specific information contained in Table 1 of Attachment H of the New York Independent System Operator's (NYISO) Open Access Transmission Tariff. These modifications are required as a result of the Commission's Order issued December 21, 2001 in Docket Nos. EC02–7–000 and ER02–109–000 authorizing the establishment of a new Rockland Electric Company zone in the PJM Interconnection, L.L.C. On that same date, the NYISO also filed parallel changes to Table 1 of Attachment H. O&R and the NYISO request an effective date of February 1, 2002 and request waiver of the Commission's notice requirements.

Copies of this filing have been served on the New York, New Jersey and Pennsylvania regulatory commissions and upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: February 1, 2002.

9. Idaho Power Company

[Docket No. ER02–759–000]

Take notice that on January 11, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and IDACORP Energy Company, under its open access transmission tariff in the above-captioned proceeding.

Comment Date: February 1, 2002.

10. Idaho Power Company

[Docket No. ER02–760–000]

Take notice that on January 11, 2002, Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and IDACORP Energy Company, under its open access transmission tariff in the above-captioned proceeding.

Comment Date: February 1, 2002.

11. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–761–000]

Take notice that on January 11, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 154 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of December 12, 2001 to EnergyUSA–TPC Corp.

Copies of the filing have been provided to all parties of record.

Comment Date: February 1, 2002.

12. Alliant Energy Corporate Services Inc.

[Docket No. ER02–762–000]

Take notice that on January 11, 2002, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing with the Federal Energy Regulatory Commission (Commission), a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Utilities Plus, (Customer).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of December 13, 2001.

Comment Date: February 1, 2002.

13. Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP

[Docket No. ER02–763–000]

Take notice that on January 11, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) rendered for filing two agreements pursuant to which the Wildflower Entities will sell capacity, energy and ancillary services at market-based rates according to their FERC Electric Tariff, Original Volume No. 1 to their affiliates Coral Energy Management, LLC, under one agreement, and to Coral Power, L.L.C. under the other agreement.

Comment Date: February 1, 2002.

14. Virginia Electric and Power Company

[Docket No. ER02–764–000]

Take notice that on January 14, 2002, Virginia Electric and Power Company (the Company), respectfully tendered for filing Service Agreement by Virginia Electric and Power Company to MIECO, Inc., designated as Service Agreement No. 8, under the Company's short-form market-based rate tariff, FERC Electric Tariff, Original Volume No. 6., effective on June 15, 2001.

The Company requests an effective date of December 27, 2001, as requested by the customer. Copies of the filing were served upon MIECO, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 4, 2002.

15. UtiliCorp United Inc.

[Docket No. ER02–765–000]

Take notice that on January 14, 2002, UtiliCorp United Inc. (UtiliCorp) tendered for filing Service Agreement No. 109 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 24, a network transmission service agreement between UtiliCorp's Missouri Public Service division and the City of El Dorado Springs, Missouri. UtiliCorp requests an effective date for the service agreement of December 16, 2001.

Comment Date: February 4, 2002.

16. Florida Power & Light Company

[Docket Nos. ER02–766–000]

Take notice that on January 14, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted Interconnection and Operation Agreement between FPL and Progress Energy's DeSoto County Generating Company, LLC (Progress DeSoto) that sets forth the terms and conditions governing the interconnection between Progress DeSoto's generating project and FPL's transmission system. A copy of this filing has been served on Progress DeSoto and the Florida Public Service Commission.

Comment Date: February 4, 2002.

17. Allegheny Energy Global Markets, LLC

[Docket No. ER02–767–000]

Take notice that on January 14, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Global Markets, LLC (AEGM) filed a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1–5.

AEGM requests an effective date for the cancellation of December 31, 2001.

Comment Date: February 4, 2002.

18. Idaho Power Company and IDACORP Energy, Inc.

[Docket No. ER02–768–000]

Take notice that on January 14, 2002, Idaho Power Company (IPC) and IDACORP Energy, Inc.(IE) filed an amendment to the Agreement for Electricity Supply Services between IPC and IE in this proceeding.

Comment Date: February 4, 2002.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–769–000]

Take notice that on January 14, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The supplement provides for an increase in the carrying charges under the facilities agreement.

Con Edison states that a copy of this filing has been served upon O&R.

Comment Date: February 4, 2002.

20. International Transmission Company

[Docket No. ER02–770–000]

Take notice that on January 14, 2002, International Transmission Company (ITC) filed with the Federal Energy Regulatory Commission (the Commission) an executed Service Agreement between ITC and Mirant Wyandotte, LLC (the Agreement).

ITC requests that the Commission accept the Agreement for filing effective as of January 15, 2002.

Comment Date: February 4, 2002.

21. Handsome Lake Energy, LLC

[Docket No. ER02–771–000]

Take notice that on January 14, 2002, Handsome Lake Energy, LLC (Handsome Lake) tendered for filing, under section 205 of the Federal Power Act, a rate schedule for reactive power and voltage control from generation sources service provided to the transmission facilities controlled by the PJM Interconnection LLC (PJM).

Handsome Lake requests an effective date for the proposed rate schedule of January 12, 2002.

Handsome Lake mailed a copy of this filing to PJM.

Comment Date: February 4, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1728 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–42–000, *et al*.]

Maritime Electric Company, Limited, *et al*; Electric Rate and Corporate Regulation Filings

January 16, 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. Maritime Electric Company, Limited, FortisUS Energy Corporation and Fortis Properties Corporation

[Docket No. EC02–42–000]

Take notice that on January 10, 2002, Maritime Electric Company, Limited, on behalf of itself, FortisUS Energy Corporation, and Fortis Properties Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities under an intra-corporate restructuring.

Comment Date: January 31, 2002.

2. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on January 14, 2002, TXU Tradinghouse Company LP (TXU) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on January 14, 2002, TXU DeCordova Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU Mountain Creek Company LP

[Docket No. EG02–51–000]

Take notice that on January 14, 2002, TXU Mountain Creek Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on January 14, 2002, TXU Big Brown Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on January 14, 2002, TXU Handley Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Generation Company LP

[Docket No. EG02–54–000]

Take notice that on January 14, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for exempt wholesale generator status filed pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. ExTex LaPorte Limited Partnership

[Docket No. EG02–60–000]

Take notice that on January 9, 2002, ExTex LaPorte Limited Partnership (ExTex) filed a supplement to its Application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: February 6, 2002, the Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Southwestern Electric Power Company

[Docket No. ER02–251–000]

Take notice that on January 10, 2002, Southwestern Electric Power Company (SWEPCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Power Supply Agreement Between Southwestern Electric Power Company and the City of Hope, Arkansas.

Comment Date: January 31, 2002.

10. Central Maine Power Company

[Docket No. ER02–720–000]

Take notice that on January 8, 2002, Central Maine Power Company (Central Maine) filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, an executed System Contract Entitlement Agreement, an executed Renewable and Eligible Resource Entitlement Agreement, and an executed Nuclear Entitlement Agreement (collectively, Entitlement Agreements), as well as an executed Comprehensive Credit Support and Final Settlement Calculation Agreement (A Credit Support Agreements). In addition, CMP requested confidential treatment for certain competitively sensitive material contained in the Entitlement Agreements and Credit Support Agreement.

Comment Date: January 29, 2002.

11. PPL Electric Utilities Corporation

[Docket No. ER02–722–000]

Take notice that on January 8, 2002, PPL Electric Utilities Corporation (PPL Electric) filed notice of termination of the Service Agreement between it and GPU Advanced Resources, Inc. designated as Service Agreement No. 11 under PPL Electric's FERC Electric Rate Schedule, First Revised Volume No. 5. PPL Electric requests a March 11, 2002 termination date for the Agreement.

Notice of the termination has been served upon GPU Advanced Resources, Inc.

Comment Date: January 29, 2002.

12. MxEnergy Inc.

[Docket No. ER02–737–000]

Take notice that on January 9, 2002, MxEnergy Inc. (Seller) petitioned the Federal Energy Regulatory Commission (Commission) for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under subparts B and C of part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: January 30, 2002.

13. Illinois Power Company

[Docket No. ER02–738–000]

Take notice that on January 9, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Corn Belt Electric Cooperative Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of January 1, 2002, for the Agreements and accordingly seeks a waiver of the Commission's notice requirement.

Comment Date: January 30, 2002.

14. Avista Corporation

[Docket No. ER02–739–000]

Take notice that on January 9, 2002, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.12 of the Commissions, 18

CFR part 35.12 , an executed Mutual Netting Agreement, Rate Schedule No. 292, with Sacramento Municipal Utility District, effective January 1, 2002.

Notice of the filing has been served to Mr. Thomas W. Ingwers Director, Energy Trading & Contracts Sacramento Municipal Utility District.

Comment Date: January 30, 2002.

15. Northwest Natural Gas Company

[Docket No. ER02–740–000]

Take notice that on January 9, 2002, Northwest Natural Gas Company (NW Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its Rate Schedule FERC No. 1 applicable to sales of electricity at market-based rates. NW Natural states that it has not made any sales of electricity under that rate schedule and has no plans to do so.

NW Natural has asked to make the Notice of Cancellation effective on January 10, 2002.

Comment Date: January 30, 2002.

16. Exelon Generation Company, LLC

[Docket No. ER02–741–000]

Take notice that on January 10, 2002, Exelon Generation Company, LLC tendered for filing a service agreement under its market-based rate wholesale power sales tariff under which it will make sales of capacity and energy to Exelon Energy Company.

Comment Date: January 31, 2002.

17. Progress Energy on behalf of Florida Power Corporation

[Docket No. ER02–742–000]

Take notice that on January 10, 2002, Florida Power Corporation (FPC) tendered for filing a Service Agreement for Network Contract Demand Transmission Service with Florida Power & Light Company. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC. A copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of January 1, 2002 for this Service Agreement.

Comment Date: January 31, 2002.

18. Cinergy Services, Inc.

[Docket No. ER02–743–000]

Take notice that on January 10, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and East Kentucky Power Cooperative, Inc. (East Kentucky). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment Date: January 31, 2002.

19. New York State Electric & Gas Corporation

[Docket No. ER02–744–000]

Take notice that on January 10, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, a supplement to Rate schedule 72 filed with FERC corresponding to an agreement with the Municipal Board of the Village of Bath (the Village). The proposed supplement would decrease revenues by $277.63 based on the twelve month period ending December 31, 2000.

NYSEG requests an effective date of January 1, 2002. Copies of the filing were served upon the Municipal board of the Village of Bath and the Public Service Commission of the State of New York.

Comment Date: January 31, 2002.

20. American Transmission Company LLC

[Docket No. ER02–753–000]

Take notice that on January 10, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Network Operating Agreement and a Revised Network Integration Service Agreement for Wisconsin Rapids Water Works and Lighting Commission. ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 31, 2002.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER02–754–000]

Take notice that on January 10, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of September 1, 2001.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment Date: January 31, 2002.

22. Virginia Electric and Power Company

[Docket No. ER02–755–000]

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) with GenPower Earleys, L.L.C. (GenPower) that complies with the Commission's December 11, 2001 Order.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the revised tariff page effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11th Order.

Copies of the filing were served upon GenPower, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment Date: January 31, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1697 Filed 1–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7132–7]

EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period for draft perchlorate toxicological review and risk characterization.

SUMMARY: On January 2, 2002, EPA published a **Federal Register** notice (67 FR 75) announcing: the public availability, expected on January 9, 2002, of the revised draft document entitled, ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' (NCEA–I–0503); the beginning of a 30-day public comment period on the revised draft document; and an external peer review workshop in Sacramento, California on March 5 and 6, 2002. Due to some necessary technical editing to clarify the discussion of some of the studies included in the draft document, public release, and availability of the perchlorate external review draft was delayed by approximately one week. Accordingly, EPA is extending the public comment period until February 19, 2002. Please note that comments received by February 19 will be made available at the peer review workshop.

DATES: Only comments postmarked by February 19, 2002, will be made available at the workshop.

ADDRESSES: The external review draft of the perchlorate document is available on EPA's National Center for Environmental Assessment (NCEA) Web site at *http://www.epa.gov/ncea.* 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.*

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and submission of comments should be directed to EPA's contractor, Eastern Research Group, Inc. (ERG), at 781–674–7374. For technical inquiries, please contact: Annie M. Jarabek, U.S. Environmental Protection Agency (MD 52), USEPA Mailroom, Research Triangle Park, NC 27711; telephone 919–541–4847; facsimile 919–541–1818; e-mail *jarabek.annie@epa.gov.*

Dated: January 17, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–1757 Filed 1–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices; Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, January 29, 2002 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, January 31, 2002 at 10:00 A.M.

PLACE: 999 E Street, N.W., Washington, DC. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Comments on Draft Interpretation of Travel Allocation Regulations at 11 CFR 106.3(b).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–1933 Filed 1–22–02; 8:45 am]

BILLING CODE 6715–01–M

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, N.W., Room 940. 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.: 011745–003.

Title: Evergreen/Lloyd Triestino Alliance Agreement.

Parties: Evergreen Marine Corp.(Taiwan) Ltd. (''Evergreen''), Lloyd Triestino Di Navegazione S.P.A.

Synopsis: The proposed amendment: adds Hatsu Marine Limited as a party to the agreement; adds four additional vessels to be delivered between April of 2002 and June of 2003, replacing four Evergreen vessels; and adds certain authority concerning the sharing of personnel for supervisory, administrative, marketing, accounting, and operational functions.

Agreement No.: 201022–001.

Title: New Orleans/Coastal Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Coastal Cargo Company, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through March 31, 2002.

Agreement No.: 201030–002.

Title: New Orleans/SSA Gulf/P&O Ports Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, SSA Gulf Terminals, Inc., P&O Ports Gulfport, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through July 23, 2002.

Agreement No.: 201044–002.

Title: San Francisco MTC Non-Exclusive Terminal Management Agreement.

Parties: San Francisco Port Commission, Marine Terminals Corporation.

Synopsis: The proposed amendment makes changes in management details and provides a sharing arrangement to offset losses to MTC resulting from MTC not meeting its revenues for the facility. The agreement continues to run through December 31, 2002.

Agreement No.: 201108–001.

Title: New Orleans/Empire Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Empire Stevedoring (LA), Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges.

Agreement No.: 201110–004.

Title: Oakland/Hanjin/Total Terminal Agreement.

Parties: Port of Oakland, Hanjin Shipping Company, Ltd., Total Terminals International, LLC.

Synopsis: The proposed amendment assigns Hanjin's rights under the

agreement to Total Terminals International, LLC. The agreement continues to run through June 7, 2016.

Agreement No.: 201121–001.

Title: New Orleans/Pacorini Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans, Pacorini USA, Inc.

Synopsis: The proposed amendment adds a special rate for bulk cargo discharged to barges. The agreement continues to run through April 14, 2006.

By Order of the Federal Maritime Commission.

Dated: January 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1801 Filed 1–23–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

US Rich Long, Inc., 10932 Schmidt Road, #H, El Monte, CA 91733, Officers: George Sun, President, (Qualifying Individual), Gloria You, Director

Florida Trade Consolidators Inc., 6123 NW 72nd Avenue, Miami, FL 33166, Officer: Samir Assad, President, (Qualifying Individual)

DLS Logistics, Inc., 1026 Edwards Road, Burlingame, CA 94010, Officers: Denis I. Cheng, President, (Qualifying Individual), Lawrence Chang, Vice President

ADCOM Express Inc. dba ADCOM Worldwide Inc., 7424 W. 78th Street, Edina, MN 55439, Officers: Douglas Bramer, Vice President, (Qualifying Individual), Robert Friedman, CEO

America Keyun Int'l Logistics, Inc., 939 S. Atlantic Blvd., #209A, Monterey Park, CA 91754, Officers: Yan Yu, Secretary, (Qualifying Individual), Li, Ying Jie, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

KCC Logistics Inc., 2300 E. Higgins Road, Suite #204, Elk Grove Village, IL 60007, Officer: James S. Lee, President, (Qualifying Individual)

Associated Consolidators Express, 1273 Industrial Pkwy, Unit 290, Hayward, CA 94544, Officer: Frank Escalante, Operations Manager, (Qualifying Individual)

American Links Logistics International, Inc., 3591 Highland Drive, San Bruno, CA 94066, Officers: Letty Batacan, Import Manager, (Qualifying Individual), Walfredo M. Enrico, President

7 Seas Shipping, Inc. dba E J Freight Forwarding, Inc., 9060 Telstar Avenue, Suite 220, El Monte, CA 91731, Officer: Liqiu Mai, President, (Qualifying Individual)

Moog International, Inc., 1223 Grove Road, Pittsburgh, PA 15234–2397, Officers: James A. Frye, Vice President, (Qualifying Individual), Ronald P. Moog, President

United Shipping Services, Inc., 2321 Highbury Avenue, #51, Los Angeles, CA 90032, Officers: Rachel Liu, President, (Qualifying Individual), Peng-Xing Liu, Secretary

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Krenz International Inc., 3125 S. 56th Street, Milwaukee, WI 53219, Officer: John F. Krenz, President, (Qualifying Individual)

Dated: January 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1802 Filed 1–23–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Credit Riviere Bancorporation, Inc., Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Sinai, Sinai, South Dakota.

Board of Governors of the Federal Reserve System, January 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1709 Filed 1–23–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the twelfth meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on February 13, 2002, and 8:30 a.m. to 5 p.m. on February 14, 2002, at the Bethesda Marriott, 5151 Pooks Hill road, Bethesda, MD 20814. The meeting will be open to the public with attendance limited to space available.

The Committee will discuss a number of topics, including a report from HHS agencies on their support of activities that increase the knowledge and utility of genetic tests, horizon scanning in genetic testing, and the Informed Consent Work Group's development of principles of informed consent in clinical and public health settings. Through a number of invited presentations, the Committee will also begin exploring issues regarding the collection and analysis of population data by race and ethnicity in health policy generally and in genetic testing specifically. Time will be provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGT office is located at 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Dated: January 15, 2002.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 02–1793 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Anthropometric Survey of Respirator Users—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

The overall goal of the current project is to develop respirator fit-test panels that accurately represent today's workers who rely on respirators to prevent work-related respiratory illnesses, injuries, and death. The respirator fit-test panels currently used are 25-subject panels, developed by Los Alamos National Laboratory (LANL) based on data from the 1967–1968 survey of U.S. Air Force men and women. The half-mask panel is based on face length and lip length and the full-facepiece panel is based on face length and face width. These panels were established to represent the working population. The fit of respirators on these subject panels is assumed to be representative of the fit of respirators in the user populations. Respirators designed to fit these panels are also expected to accommodate at least 95% of the wearers. However, NIOSH research indicated that the LANL panel for full-facepiece respirators accommodated only 84% of current civilian subjects. Sizing data generated by the military for use in fitting respirators has been the normative basis for commercial respirator sizing. Anthropometric data developed for males of military age in the 1950's and 1960's is still in use today. Military populations cannot represent the worker population because of relatively strict anthropometric armed forces entry requirements and height/weight guidelines for troop retention. Personal protective equipment designed and sized for a military population may not provide the same level of protection to civilian workers because of the greater diversity in body size and shape seen in civilian populations. In addition, the demographics of the U.S. population have changed over the last 30 years. Thus, it is necessary to assess and refine the LANL fit-test panels.

This project will first develop an anthropometric database detailing the face-size distributions of respirator users using both traditional measurement methods and three-dimensional (3–D) scanning systems. The source population for this study will be the nationwide respirator users population. The databases will then be used to establish respirator fit-test panels that accurately represent today's workers. Three-dimensional anthropometry has only been available recently, and there is no track record of applying scan data to respirators. This study will provide preliminary data on which to develop methods for sizing and designing respirators and protective eyewear using 3–D scan data.

The subjects will be recruited from various industries in which workers rely on respirators to prevent work-related respiratory illnesses, injuries, and death (*e.g.,* manufacturing, construction, mining, and health care). The project will also address emergency responders to chemical and biological terrorism and other crisis situations. Thus, subjects will also include law enforcement officers, firefighters, and health care workers. Height and weight plus 18 facial dimensions will be measured with traditional methods. A total of 4,000 subjects will be measured using traditional methods. Of those, 1,000 will

be scanned using a 3–D head scanner (Cyberware Model 3030/RGB). The populations will be sampled by age, race and gender. A stratified sampling plan is being used with equal sample size in each cell (166). The strata consist of: 3 age groups (18–29, 30–44, and 45–65 years), 2 gender strata (male and female), and 4 ethnic groups (White, African Americans, Hispanic, and Others). The total number of cells is 24. The study will be conducted at five locations nationwide. Although test sites have yet to be determined, data collection is anticipated at two facilities in the western U.S., one in the central portion of the country, and at two locations in the east.

Information generated by this research project will benefit:

(1) The participants and workers exposed to various gases and aerosols by improving fit and function of respirators worn during work; and (2) those involved in testing, certifying, and manufacturing respirators to be used in industry, by providing them with fit-test panels that accurately represent today's workers. The panels can be used for evaluating respirator facepiece fit characteristics. The long-term potential benefits are improved respirator quality and performance and increased worker protection. There are no costs to respondents.

Respondents	Number of respondents	Number of responses respondent	Average burden per response (in hours)	Total burden in hours
Workers (Data Collection #1)	3000	1	15/60	750
Workers (Data Collection #2)	1000	1	20/60	333
Total				1083

Dated: January 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Program Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1690 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Preventive Health and Health Services Block Grant, Annual Application and Reports (OMB #0920–0106)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). In 1994, OMB approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services (PHHS) Block Grant (OMB #0920–0106). This approval expires on November 30, 2001. CDC is requesting OMB clearance for this legislatively mandated information collection until November 30, 2004. The request is to approve the development and adherence to *Healthy People 2010*, the Nation's Health Objectives which was released the Spring of 2000. The PHHS block grant is mandated according to section 1904 to adhere to the Healthy People framework, therefore, the current application and report format was restructured to coincide with 2010.

This information collected through the applications from the official State health agencies is required from section 1905 of the Public Health Service Act. There is a slight change in the proposed information collection from previous years. The changes include more program specific information and the relationship of block funded activities to program strategy. The information collected from the annual reports is required by section 1906. The development of a PHHS block grant Web page with data Web links from existing federal databases will be used to coincide with the collection of uniform data for the annual report. The availability to collect data through internet accessibility will allow for a more streamlined and efficient use of data processing by the states and will reduce the states burden of duplicate reporting on outcome and risk factor data. The total annual burden for this data collection is 4,270 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)
Application	61	1	30
Report	61	1	40

Dated: January 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–1689 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02E01]

Medical Monitoring for New York Personnel Engaged in Emergency Response Activities Related to the Disaster of September 11, 2001; Notice of Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of funds for a cooperative agreement program for Medical Monitoring for New York Personnel Engaged in Emergency Response Activities Related to the Disaster of September 11, 2001. The purpose of the program is to provide medical monitoring for New York City Fire Department and New York State Personnel who may have been exposed to hazardous substances while providing emergency response services as a result of the disaster of September 11, 2001. This program addresses the ''Healthy People 2010'' focus areas Environmental Health and Public Health Infrastructure.

B. Eligible Applicant

Eligible applicants are Health Research, Inc./New York State Department of Health and New York City Fire Department. No other applications were solicited. New York State has received a Presidential declaration of disaster.

This project is authorized by H.R. 2888, 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States.

C. Availability of Funds

Approximately $4,801,550 is available to fund one award to New York City Fire Department, and approximately $2,406,000 is available to fund one award to Health Research, Inc./New York State Department of Health. It is expected that each award will be made for a 12-month budget period. As long as funds are directed for these applicants, continuation funding will be made available for up to 5 years. Funding estimates may vary and are subject to change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Lead Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2740, E-mail address: *sqr2@cdc.gov.*

For program technical assistance, contact: Ron Burger, Public Health Advisor, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (MS F–38) Atlanta, GA 30341–3724, Telephone number: (404) 488–4024, E-mail address: *rburger@cdc.gov.*

Dated: January 17, 2002.

Rebecca B. O'Kelley,

Chief, International Grants and Contracts Branch, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 02–1717 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #02001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #02001.

Times and Dates:

7 p.m.–7:25 p.m., February 17, 2002 (Open)

7:30 p.m.–10:15 p.m., February 17, 2002 (Closed)

8 a.m.–6 p.m., February 18, 2002 (Closed)

8 a.m.–6:30 p.m., February 19, 2002 (Closed)

8 a.m.–1 p.m., February 20, 2002 (Closed)

Place: Trade Winds Sandpiper Hotel, 6000 Gulf Boulevard, St. Pete Beach, Florida 33706.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #02001.

CONTACT PERSON FOR MORE INFORMATION: Bernadine Kuchinski, Ph.D., Occupational Health Consultant, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, M/S D40, telephone (404) 639–3342.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 16, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–1718 Filed 1–23–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Centers for Medicare and Medicaid Services, HHS.

This notice announces and displays OMB control numbers for Centers for Medicare and Medicaid Services (CMS) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR part 1320. Once OMB has

approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be ''provided in a manner that is reasonably calculated to inform the public.'' To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement, CMS has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for CMS's information collections that have been approved by OMB.

	OMB control Nos.
42 CFR:	
405.262	0938–0267
405.371	0938–0600
405.376	0938–0270
405.378	0938–0600
405.410	0938–0730
405.430, 405.435, 405.440, 405.445, 405.455	0938–0730
405.711	0938–0045
405.807	0938–0033
405.821	0938–0034
405.2100–405.2171	0938–0386
405.2110, 405.2112	0938–0657, & 0658
405.2133	0938–0046
405.2135–405.2171	0938–0360
405.2470	0938–0155
406.7	0938–0251
406.13	0938–0080
406.15	0938–0501
406.28	0938–0025 & 0787
407.10, 407.11	0938–0245
407.18	0938–0679
407.27	0938–0025 & 0787
407.40	0938–0035
408.6	0938–0041
409.40–409.50	0938–0357
410.1	0938–0679
410.2	0938–0770
410.32	0938–0685
410.33	0938–0721
410.36	0938–0357
410.38	0938–0534
410.40	0938–0042
410.61	0938–0730
410.71	0938–0685
410.141–410.145	0938–0818
410.170	0938–0357
411.1	0938–0846
411.4–411.15	0938–0357
411.20–411.206	0938–0565
411.350–411.357	0938–0846
411.370—411.389	0938–0714
411.404—411.406	0938–0465, 0781 & 0692
411.408	0938–0566
412	0938–0842
412.20–412.32	0938–0358
412.40–412.52	0938–0359
412.42	0938–0692
412.44, 412.46	0938–0445
412.92	0938–0477
412.105	0938–0456
412.106	0938–0691
412.116	0938–0269
412.256	0938–0573
413	0938–0842
413.17	0938–0202 & 0685
413.20	0938–0202, 0236 & 0600
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0236, 0301, 0463, 0511 & 0758
413.64	0938–0269

	OMB control Nos.
413.106	0938–0022
413.170	0938–0296
413.343	0938–0739
414.40	0938–0008
414.63	0938–0818
414.330	0938–0372
415.50, 415.55, 415.60, 415.70	0938–0301
415.110	0938–0730
415.150, 415.152, 415.160, 415.162	0938–0301
416.1–416.150	0938–0266
416.44	0938–0242
417.126	0938–0469 & 0732
417.143	0938–0470
417.162	0938–0469
417.408	0938–0470
417.436	0938–0610
417.440	0938–0692
417.470	0938–0732
417.478	0938–0469
417.479, 417.500	0938–0700
417.801	0938–0610
417.800–417.840	0938–0768
418.1–418.405	0938–0313& 0379
418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100	0938–0302
418.100	0938–0242
420.200–420.206	0938–0086
421.100	0938–0357
421.310, 421.312	0938–0723
422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, 422.560–422.622	0938–0763
422.1–422.700	0938–0753
422.64, 422.111, 422.560—422.622	0938–0778
422.152	0938–0701 & 0840
422.208, 422.210	0938–0700
422.300–422.312	0938–0742
422.370–422.378	0938–0722
422.568	0938–0829
422.620	0938–0692
424.5	0938–0534 & 0279
424.20	0938–0454
424.22	0938–0357, 0489 & 0846
424.24	0938–0730
424.32	0938–0008 & 0739
424.44	0938–0008
424.57	0938–0717, 0749, & 0685
424.73, 424.80	0938–0685
424.103	0938–0023
424.123	0938–0484
424.124	0938–0042
426.102–426.104	0938–0526
430.10	0938–0673
430.10–430.20	0938–0193
430.12	0938–0610
430.20	0938–0610
430.30	0938–0101
431.1–431.865	0938–0062
431.17	0938–0467
431.107	0938–0610
431.306	0938–0467
431.630	0938–0445
431.636	0938–0841
431.800	0938–0300
431.800–431.820	0938–0144
431.800–431.865	0938–0146, 0147, & 0246
433.68, 433.74	0938–0618
433.138	0938–0502
434.28	0938–0610
434.44, 434.67, 434.70	0938–0700
435.1–435.1011	0938–0062
435.910, 435.920, 435.940–435.960	0938–0467
438.364	0938–0786
440.1–440.270	0938–0062
440.30	0938–0685

	OMB control Nos.
440.167	0938–0193
440.180	0938–0272, & 0449
441.16	0938–0713
441.60	0938–0354
441.152	0938–0754
441.300–441.305	0938–0272
441.300–441.310	0938–0449
442.1–442.119	0938–0062
447.31	0938–0287
447.53	0938–0429
447.254	0938–0784
447.272	0938–0618 & 0855
447.280	0938–0624
447.321	0938–0855
447.500–447.542	0938–0676
447.550	0938–0676
455.100–455.106	0938–0086
456.654	0938–0445
456.700, 456.705, 456.709, 456.711, 456.712	0938–0659
457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180.	0938–0841
460.12, 460.22, 460.30, 460.32, 460.52, 460.60, 460.68, 460.70, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.206, 460.208, 460.210.	0938–0790
466.71, 466.73, 466.74, 466.78	0938–0445
466.78	0938–0692
473.18, 473.34, 473.36, 473.42	0938–0443
476.104, 476.105, 476.116, 476.134	0938–0426
482.1–482.66	0938–0380
482.2–482.57	0938–0382
482.12, 482.22	0938–0328
482.27	0938–0328
482.41	0938–0242
482.30, 482.41, 482.43, 482.53, 482.56, 482.57	0938–0328
482.45	0938–0810
482.60—482.62	0938–0378 & 0328
482.66	0938–0328, & 0624
483.10	0938–0610
483.270	0938–0242
483.350–483.376	0938–0833
483.400–483.480	0938–0062
483.470	0938–0242
484.1–484.52	0938–0365
484.10	0938–0610 & 0781
484.10–484.52	0938–0355
484.11	0938–0761
484.12	0938–0685
484.18	0938–0357
484.20	0938–0761
484.55	0938–0760
484.220	0938–0760
485.56, 485.58, 485.60, 485.64, 485.66	0938–0267
485.701–485.729	0938–0065, & 0273
486.100—486.110	0938–0027
486.104, 486.106, 486.110	0938–0338
486.301–486.325	0938–0512, & 0688
488.4–488.9	0938–0690
488.18	0938–0391, & 0667
488.26	0938–0391
488.28	0938–0391
488.60	0938–0360
488.201	0938–0690
489	0938–0832
489.20	0938–0214, 0667, & 0692
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.32, 489.34	0938–0692
489.66, 489.67	0938–0713
489.102	0938–0610
491.1–491.11	0938–0074

	OMB control Nos.
491.3, 491.8	0938–0792
491.9	0938–0334
493.1–493.2001	0938–0151, 0544, 0581, 0599, 0612, 0650, & 0653
493.551–493.557	0938–0686
493.1269—493.1285	0938–0170
493.1840	0938–0655
498.40–498.95	0938–0486, & 0567
1003.100, 1003.101, 1003.103	0938–0700
1004.40, 1004.50, 1004.60, 1004.70	0938–0444
45 CFR:	
5b	0938–0734
146	0938–0702
146.121	0938–0819
146.141	0938–0827
148	0938–0703 & 0797

Dated: January 15, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–1686 Filed 1–23–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0851]

Determination of Regulatory Review Period for Purposes of Patent Extension; T-Scan 2000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for T-Scan 2000 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

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

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device T-Scan 2000. T-Scan 2000 is intended for use as an adjunct to mammography in patients who have equivocal mammographic findings within ACR–BI–RADS categories 3 and 4. In particular, it is not intended for use in cases with clear mammographic or non-mammographic indications for biopsy. This device provides the radiologist with additional information to guide a biopsy recommendation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for T-Scan 2000 (U.S. Patent No. 4,291,708) from Transcan Research and Development Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 13, 2000, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of T-Scan 2000 represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for T-Scan 2000 is 1,595 days. Of this time, 964 days occurred during the testing phase of the regulatory review period, while 631 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: December 5, 1994. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective December 5, 1994.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: July 25, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for T-Scan 2000 (PMA P970033) was initially submitted July 25, 1997.

3. *The date the application was approved*: April 16, 1999. FDA has

verified the applicant's claim that PMA P970033 was approved on April 16, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 25, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 23, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1723 Filed 1–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: February 20–21, 2002.

Open: February 20, 2002, 8:45 AM to 4 PM.

Agenda: Program reports and presentations: Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: February 20, 2002, 11:55 AM to 12:55 PM.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: February 20, 2002, 12:55 PM to 1:55 PM.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Ellen Feigal, Executive Secretary, Subcommittee on Clinical Investigations, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, 3A44, Bethesda, MD 20892, (301) 496–6711.

Name of Committee: National Cancer Advisory Board.

Closed: February 20, 2002, 4:15 PM to Recess.

Agenda: Review of grant applications; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 21, 2002, 8:45 AM to Adjournment.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1794 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of other and the discussions

would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: January 23, 2002.

Closed: 1 PM to 3 PM.

Agenda: In preparation for the appointment of new members under the Bush Administration, the current President's Cancer Panel Members intend to discuss and review the performance on Federal and contract support staff for the Panel, evaluate the Panel's process, and make recommendations to be forwarded to incoming members and NCI management.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1796 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 23, 2002.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 8, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1795 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Mental Retardation Research Subcommittee, Mental Retardation Research Subcommittee.

Date: March 21–22, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1797 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Drug Development for Opportunistic Infections—Hepatitis C.

Date: February 28—March 1, 2002.

Time: February 28, 2002, 8:30 AM to adjournment.

Agenda: To review and evaluate contract proposals.

Place: 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, NMSC–7617, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1798 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: February 20–21, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, 1400 M Street NW, Washington, DC 20005.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1799 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: February 15, 2002.

Time: 12:00 PM to 2:30 PM.

Agenda: To review and evaluate contract proposals.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 746, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1800 Filed 1–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4733–N–01]

Notice of Proposed Information Collection: Comment Request, HUD-Administered Small Cities Program Performance Assessment Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Steve Rhodeside at (202) 708–1322, Extension 7375 (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD-Administered Small Cities Program Performance Assessment Report.

OMB Control Number, if applicable: 2506–0020.

Description of the need for the information and proposed use: The information collected from grant recipients participating in the state-administered CDBG program provides HUD with financial and physical development status of each activity funded. These reports are used to determine grant recipient performance and for HUD's Annual Report to Congress on accomplishments.

Agency form numbers, if applicable: The Housing and Community Development Act of 1974, as amended, requires grant recipients that receive CDBG funding to submit a Performance Assessment Report (PAR) on an annual basis to report on program progress; and such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds (section 104(e)(2)).

Members of affected public: Grant recipients participating in the State-administered CDBG program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 800. The proposed frequency of the response to the collection of information is annual. Annual recordkeeping is estimated at 6,400 hours for approximately 800 grant recipients.

Status of the proposed information collection: Reinstatement, with minor changes, of a previously approved collection with expired and a request for OMB renewal for three years. The current OMB approval expired in January 2000.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 10, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary.

[FR Doc. 02–1685 Filed 1–23–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–01]

Notice of Submission of Proposed Information Collection to OMB; Loan Guarantee Recovery Fund Established Pursuant to the Church Arson Prevention Act of 1996

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0159) should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Report Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (2) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recover Fund established pursuant to the Church Arson Prevention Act of 1996.

OMB Approval Number: 2506–0159.

Form Numbers: SF–424, HUD–40076–LGA.

Description of the Need for the Information and Is Proposed Use: Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts or arson or terrorism.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submissions: Monthly.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	100		8		12.75		10,200

Total Estimated Burden Hours: 10,200.

Status: Extension of a currently approved collection.

Authority Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 17, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–1684 Filed 1–23–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review (extension of a currently approved collection); nomination for Young American Medal for Service.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 1, 2001 (Volume 66, page 49980), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 25, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Service.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/2, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal. *Other:* Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–1706 Filed 1–23–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information collection under review (extension of a currently approved collection); nomination for Young American Medal for Bravery.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 1, 2001 (Volume 66, page 49979), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 25, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Nomination for Young American Medal for Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/1, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government, State, Local or Tribal.

Other: Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 the annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 16, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–1707 Filed 1–23–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,482; Colorgraphic Offset Printing Co., Lancaster, NY
TA–W–40,128; TNS Mills, Inc., Eufala Plant, Eufala, AL
TA–W–40,050; Moco Thermal Industries, Romulus, MI
TA–W–39,605; Kimble Glass, Inc., Vineland, NJ
TA–W–40,317; Texfi Industries, Inc., Rocky Mount, NC
TA–W–39,658; Taylor Wharton, Harsco Gas and Fluid Control, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,794; M/A-Com Ceram Buffalo, NY
TA–W–39,938; Honeywell, Inc., Clearfield, UT
TA–W–38,579; National Starch and Chemical Co., Meredosia, IL
TA–W–40,097; Ismeca, USA, Vista, CA
TA–W–40,222; Richmond Technology, An Illinois Tool Works Co., Redlands, CA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,319; General Electro Mechanical Corp., West Seneca, NY
TA–W–40,296; Rubatex Corp., Bedford, VA
TA–W–39,713 & A; J.M. Huber Corp., Headquartered in Houston, TX and Operating Throughout the State of Texas

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,448; Newbold Corp., Rocky Mount, VA: May 28, 2000
TA–W–39,604 & A; Doran Mills, LLC, Shelby, NC and New York, NY: June 20, 2000
TA–W–40,005; SDK Knitting, Inc., Schaefferstown, PA: August 25, 2000
TA–W–40,009; JC Surrey 2001, Inc., Leander, TX: August 24, 2000
TA–W–40,078; Guilford Mills, Pine Grove, PA: September 9, 2000
TA–W–40,181; BASF Corp., Rensselaer, NY: June 19, 2001
TA–W–40,276; Dorel Juvenile Group, Inc., Formerly Cosco, Inc., St. Smith, AZ: October 8, 2000
TA–W–40,294; Fairfield Glove and Textile Col, Inc., Cherryville, NC: October 10, 2000
TA–W–40,325; Covington Industries, Inc., Calhoun Falls, SC: November 9, 2000
TA–W–40,379; HC Contracting, Inc., New York, NY: October 31, 2000
TA–W–40,454; Biltwell Clothing Co., Rector Sportswear, Rector, AR November 9, 2000
TA–W–39,374; Signature Cloth, Clifton, NJ: May 18, 2000
TA–W–39,793; Fourth Edition, Inc., Terre Hill, PA: July 30, 2000

TA–W–39,832; Fiskars Consumer Products, Inc., Wausau, WI: July 26, 2000
TA–W–39,952; MJM Knitwear Corp., Brooklyn, NY: August 16, 2000
TA–W–40,279; C & C Fashions, Inc., Bronx, NY: October 2, 2000
TA–W–40,365; Hyde Inc., Bangor, ME: November 11, 2000
TA–W–40,371; Regal Rugs, Inc., A Subsidiary of Spring Industries, Inc., North Vernon, IN: November 1, 2000

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) or (4) were not met. Imports from Canada or Mexico did not contribute importantly to worker's separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04460; National Starch and Chemical Co., Meredosia, IL
NAFTA–TAA–05159; Colorgraphic Offset Printing Co., Lancaster, NY
NAFTA–TAA–05191; Chiquita Processed Foods LLC, Eugene, OR
NAFTA–TAA–05375; Shasta Paper Co., Anderson, CA
NAFTA–TAA–05482; Texfi Industries, Inc., Rocky Mount Plant, Rocky Mount, NC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–5151; Fiskars Consumer Products, Inc., Wausau, WI: July 26, 2000
NAFTA–TAA–05324; Honeywell, Inc., Clearfield, UT: September 10, 2000
NAFTA–TAA–05427; Richmond Technology, An Illinois Tool Works Co., Redland, CA: October 8, 2000
NAFTA–TAA–05531; Regal Rugs, Inc., A Subsidiary of Spring Industries, Inc., North Vernon, IN
NAFTA–TAA–5609 & A; Key Industries, Buffalo, MO and Nevada, MO: December 5, 2000
NAFTA–TAA–05137; Kemet Electronics Corp., Greenwood Plant, Greenwood, SC, A; Mauldin Plant, Simpsonville, SC, B; Simpsonville Plant, Simpsonville, SC and C; Fountain Inn Plant, Fountain Inn, SC: July 23, 2000
NAFTA–TAA–05357; Linq Industrial Fabrics, Inc., Marino Technologies Div., Opalocka, FL: September 18, 2000
NAFTA–TAA–055883; Weavexx, A Xerium Co., Greenville, TN: November 27, 2000
NAFTA–TAA–05214; Horton, Inc., Britton, SD: June 29, 2000

I hereby certify that the aforementioned determinations were issued during the month of January, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 15, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1784 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,557]

Midwest Garment Co., Chesterfield, Missouri; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 14, 2002, in response to a worker petition which was filed by the company on behalf of workers at Midwest Garment Company, Chesterfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1783 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 4, 2002.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 4, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 12/17/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,429	Onkyo America (Co.)	Columbus, IN	11/30/2001	Automotive Speakers.
40,430	Vesuvius USA (Co.)	Cleveland, OH	11/05/2001	Hot and Cold Rolled Steel.
40,431	ACME Steel (Wkrs)	Riverdale, IL	11/28/2001	Hot Rolled Steel.
40,432	Phoenix Finishing (Co.)	Gaffney, SC	11/01/2001	Finished Broadwoven Fabrics.
40,433	Olin Brass (Co.)	Indianapolis, IN	11/09/2001	Brass and Copper Alloys.
40,434	Imperial Carbide (Co.)	Meadville, PA	11/29/2001	Machine Parts, Die Parts, Die and Molds.
40,435	Telaxrs Communications (Wkrs)	So. Deerfield, MA	11/04/2001	Communication Products.
40,436	Dometic Corp.(Co.)	LaGrange, IN	11/12/2001	R/V Air Conditioners.
40,437	Thomas Henshall Silk (UNITE)	Paterson, NJ	9/27/2001	Finished Textile Fabrics.
40,438	Appleton Papers (Co.)	Camp Hill, PA	10/31/2001	Carbonless Paper.
40,439	Communication Associates (Wkrs)	Anniston, AL	11/14/2001	Power Magnetics.
40,440	Cardinal Brands, Inc (Wkrs)	Washington, MO	10/22/2001	Desk Folders Business Bags.
40,441	Road Machinery Co. (Wkrs)	Bayard, NM	12/03/2001	Heavy Road Machinery.
40,442	Case New Holland Global (Co.)	Burlington, IA	12/06/2001	Self-Propelled Backhoes, Bulldozers.
40,443	James Hamilton Constructi (Co.)	Silver City, NM	12/07/2001	Copper.
40,444	Purcel Tire (Co.)	Silver City, NM	12/03/2001	Mining Tires.
40,445	Composidie (Wkrs)	Apollo, PA	11/05/2001	High Speed Progressive Dies and Tolling.
40,446A	Value Line Textiles, Inc (Co.)	Lenoir City, TN	10/31/2001	Socks.
40,446	Value Line Textiles (Co.)	Pilot Mountain, NC	10/31/2001	Socks.
40,447	SCI, Inc. (Wkrs)	Lynchburg, VA	11/01/2001	Cellular Phones.
40,448	Metalloy Corp. (Wkrs)	Hudson, MI	11/15/2001	Truck Parts.
40,449	Clebert's Hosiery Mill (Co.)	Connelly Spring, NC	11/07/2001	Men's and Ladies' Socks.
40,450	A.O. Smith Electrical (Wkrs)	Lexington, TN	11/28/2001	Electric Motors.
40,451	Modern Prototype (Co.)	Troy, MI	11/02/2001	Automotive Prototype Parts.
40,452	N and H Corporation (Co.)	Mohnton, PA	11/06/2001	T-Shirt, Shorts and Lingerie.
40,453	Penley Corporation (Co.)	West Paris, ME	12/06/2001	Wooden Spring Clothes Pens.
40,454	Biltwell Clothing Co. (Co.)	Ractor, AR	11/09/2001	Men's Tailored Pants.
40,455	Phelps Dodge Bagdad (Co.)	Bagdad, AZ	11/13/2001	Copper—Mining and Milling.
40,456	Magnequench International (UAW)	Anderson, IN	12/07/2001	Magnets and Magnetic Power.

[FR Doc. 02–1774 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,750]

Portex Technologies, College Point, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Portex Technologies, College Point, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–38,750; Portex Technologies College Point, New York (November 1, 2001)

Signed at Washington, DC this 16th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1785 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 15, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade

Adjustment Assistance, at the address shown below, not later than February 4, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC this 21st day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 12/21/2001

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,457	Trane Company (IAMAW)	La Crosse, WI	10/10/2001	Air conditioning equipment.
40,458	Handler Textile—Duro (Co.)	Stone Mountain, GA	10/24/2001	Textile processing.
40,459	Ispat Inland, Inc. (Co.)	East Chicago, IL	12/13/2001	Cold rolled flat steel.
40,460	Radax Industries (Wrks)	Webster, NY	10/22/2001	Hex socket set screws.
40,461	Daishowa American Co. Ltd (Wrks)	Port Angeles, WA	12/10/2001	Alder chips.
40,462	Vishay Vitramon (Co.)	Roanoke, VA	12/12/2001	Ceramic capacitors.
40,463	Dunham-Bush, Inc. (Co.)	Harrisonburg, VA	10/31/2001	Heating and air haulders equipment.
40,464	Low Cost Manufacturing (Wrks)	Utica, NY	10/08/2001	Customer replacement units.
40,465	Hershey Foods Corp (Wrks)	Pennsburg, PA	11/29/2001	Hershey's Pot of Gold Candies.
40,466	Precision Cable Assemblie (Wrks)	Longansport, IN	12/14/2001	Wire harnesses—cables.
40,467	Gold Seam (Wrks)	Passaic, NJ	10/30/2001	Ladies' blouses.
40,468	DT Magnetics Int'l (Wrks)	Dover, NH	10/22/2001	Power transformers.
40,469	Kellogg Crankshaft Co (Union)	Jackson, MI	11/15/2001	Automobile crankshaft.
40,470	RBN Manufacturing, Inc. (Co.)	Dothan, AL	11/09/2001	Boxer shorts, knit tops.
40,471	FCI USA, Inc. (Wrks)	Cypress, CA	10/23/2001	Data and telecommunications.
40,472	Romart, Inc. (UNITE)	Scranton, PA	10/24/2001	Men's dress and sport coats.
40,473	Marlan Tool, Inc. (Wrks)	Meadville, PA	10/31/2001	Design molds—plastic parts.
40,474	Acme Steel Co (USWA)	Chicago, IL	10/26/2001	Steel coils.
40,475	Quality Tool and Die (Wrks)	Meadville, PA	11/16/2001	Mold and die tooling.
40,476	A.S. Haight (UNITE)	Cartersville, GA	11/19/2001	Screen printing cloth.
40,477	Precision Tool and Die (Wrks)	Louisville, KY	11/16/2001	Tooling and die components.
40,478	Dimension Carbide, Inc. (Co.)	Guys Mills, PA	11/15/2001	Custom form grinding.
40,479	Gategourmet Unit 498 (Wrks)	Charlotte, NC	11/06/2001	Food for airlines.
40,480	Flambeau Micro (Co.)	Sun Prairie, WI	10/25/2001	Motorola cell phone components.
40,481	Artex International (Co.)	Highland, IL	10/20/2001	Table linens—airline, restaurants.
40,482	Bridgestone/Firestone (USWA)	Russellville, AR	10/19/2001	Inner tubes.
40,483	Sumitomo Electric Wiring (Co.)	Morgantown, KY	12/12/2001	Electric wiring harnesses.
40,484	Bristol Compressors, Inc (Co.)	Sparta, NC	10/22/2001	Compressors for air conditioning.
40,485	Dyersburg Corp. (Co.)	Charlotte, NC	12/11/2001	Yarn dye and piece dye knit fabric.
40,486	LSI Logic (Wrks)	Santa Clara, CA	11/07/2001	Wafer fabrication.
40,487	Atlanta Manufacturing (Wrks)	Norcross, GA	10/22/2001	Cable television electronic headware.
40,488	Sunbrand (Wrks)	Norcross, GA	11/05/2001	Sell & distribution of equipment.
40,489	Empire Iron Mining (Co.)	Palmer, MI	11/30/2001	Iron ore.
40,490	Schmalbach-Lubeca Plastic (Wrks)	Erie, PA	10/23/2001	Metal mold base assemblies.
40,491	Wesley Industries, Inc (Co.)	New Haven, MI	11/20/2001	Gray iron OEM automotive parts.
40,492	Coastal Lumber Co (Wrks)	Suffolk, VA	12/04/2001	Wood products.
40,493	Kaiser Aluminum Corp (USWA)	Tacoma, WA	11/09/2001	Aluminum products.
40,494	Accuride International (Co.)	So. Bend, IN	12/17/2001	Linear slides.
40,495	Galey and Lord Services (Wrks)	Eagle Pass, TX	11/30/2001	Men's and ladies' pants.

[FR Doc. 02–1773 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05634]

A.O. Smith, Electrical Products Co., Scottsville, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 11, 2001, in response to a petition filed by a company official on behalf of workers at A.O. Smith Electrical Products Company, Scottsville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1786 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American

Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than February 4, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than February 4, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Chemical Lime (Co)	Douglas, AZ	12/12/2001	NAFTA–5,685	Lime (calcium oxide).
Road Machinery—Phelps Dodge Chino (Wkrs).	Bayard, NM	12/31/2001	NAFTA–5,686	Machine parts.
Valhoma Corp.—Nexus Management (Wkrs).	Tulsa, OK	12/28/2001	NAFTA–5,687	Horse holters.
Greenwood Mills—Liberty Mfg. (Co.)	Liberty, SC	12/28/2001	NAFTA–5,688	Finished denim fabric.
Knitcraft (Co.)	Belmont, NC	01/02/2002	NAFTA–5,689	Unfinished knit goods.
Titan Plastic Group—Plastic Engineered (Wkrs).	El Paso, TX	01/02/2002	NAFTA–5,690	Plastic injection molded parts.
International Paper (PACE)	Menasha, WI	11/13/2001	NAFTA–5,691	Silicon coated substrate.
Emerson Electric—Alco Controls (Co.).	Hazlehurst, GA	12/28/2001	NAFTA–5,692	Refrigeration filter driers.
Braeco (Co.)	Marshall, NC	12/31/2001	NAFTA–5,693	Tee shirts and shorts.
King Press (Co.)	Joplin, MO	12/28/2001	NAFTA–5,694	Printing presses.
B.B. Walker Co. and Bender Shoe Co. (Co.).	Asheboro, NC	12/27/2001	NAFTA–5,695	Western boots, work shoes.
Pittsburgh Gear (USWA)	Pittsburgh, PA	12/28/2001	NAFTA–5,696	Gears and transmissions.
R.B. and W Corp. (USWA)	Coraoplis, PA	12/28/2001	NAFTA–5,697	Fasterns for automotive.
Leech Tool and Die Works (Wkrs)	Meadville, PA	12/28/2001	NAFTA–5,698	Tool and dies (molds).
Applied Concepts (Wkrs)	Warrendale, PA	12/28/2001	NAFTA–5,699	Hand tools.
Hein Werner—Snap On (Co.)	Baraboo, WI	01/03/2002	NAFTA–5,700	Collision repair equipment.
Treno Technologies (Wkrs)	Round Rock, TX	01/04/2002	NAFTA–5,701	Plastic and sheetmetal computer cases.
Meridian Automotive Systems (Wkrs)	Portland, OR	01/02/2002	NAFTA–5,702	Rigs.
ITT Industries (Wkrs)	Newton, MA	01/07/2002	NAFTA–5,703	Switches.
Odetics, Inc. (Co.)	Anaheim, CA	12/07/2001	NAFTA–5,704	Viedo surveilance recorder.
Denso Sales California (Co.)	Long Beach, CA	11/10/2001	NAFTA–5,705	Automotive tube, hoses, air conditioning.
Clearwater Forest Industries (Co.)	Kooskia, ID	01/03/2002	NAFTA–5,706	Dimensional lumber.
Hunter Sadler—Lanier Clothes (Co.)	Tupelo, MS	01/04/2002	NAFTA–5,707	Clothing.
Seco Warwick Corporation (Co.)	Meadville, PA	01/11/2002	NAFTA–5,708	Industrial heat treating equipment.
Precision Twist Drill (Wkr)	Rhinelander, WI	12/20/2001	NAFTA–5,709	Twist drill bits.
Rockwell Collins (Co.)	Pomona, CA	01/07/2002	NAFTA–5,710	In flight entertainment system.
FCI USA (Wkrs)	Emigsville, PA	01/11/2002	NAFTA–5,711	Electrical connectors.
Crown, Corky and Seal Pakaging (Wkrs).	So. Connellsville, PA	01/11/2002	NAFTA–5,712	Plastical lined closures.
Borg Warner Automotive (Wkrs)	Coldwater, MI	01/08/2002	NAFTA–5,713	Automotive transmission components.
Artex International (Wkrs)	Highland, IL	01/08/2002	NAFTA–5,714	Table linens (napkins & tablecloths).
Bilco Manufacturing (Co.)	Macon, GA	01/09/2002	NAFTA–5,715	Wooden shell rolls.
VF Jeanswear (Wkrs)	Prague, OK	01/08/2002	NAFTA–5,716	Jeans and causalwear.
National Oilwell (Wkrs)	McAlester, OK	01/08/2002	NAFTA–5,717	Pumps.
Iris Graphics—A Creo Co. (Co.)	Billerila, MA	01/07/2002	NAFTA–5,718	Proofing products.
Monona Wire (Co.)	Livington, WI	01/09/2001	NAFTA–5,719	Wiring harnesses for medical.
Hershey Chocolate and Confectionery (Wkrs).	Wheatridge, CO	12/13/2001	NAFTA–5,720	Hard candy.
Steelcase (Wkrs)	Fletcher, NC	01/10/2002	NAFTA–5,721	Wood.
Siemens Energy and Automation (Co.).	Osceola, IA	01/04/2002	NAFTA–5,722	Elevator starters.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Screen Creations (Wkrs)	O'Fallon, MO	01/10/2002	NAFTA–5,723	T-shirts.
Credence Systems (Wkrs)	Hillsboro, OR	11/09/2001	NAFTA–5,724	Automative test equipment.
Inoac Packaging Group (Co.)	Leitchfield, KY	01/10/2002	NAFTA–5,725	Plastic bottle decoration.
Agere Systems (Co.)	Breingsville, PA	01/14/2002	NAFTA–5,726	Optic devices.
Burlington Industries (Wkrs)	Cordova, NC	01/08/2002	NAFTA–5,727	Synthetic fabrics.
Quality Metal Products (Co.)	Bessener City, NC	01/14/2002	NAFTA–5,728	Fabricated truck parts.
M.S. Chambers and Son (Co.)	Baltic, CT		NAFTA–5,729	Gravure print cylinders.
SDS Lumber (Co.)	Bingan, WA	01/14/2002	NAFTA–5,730	Plywood.
Hammond Power Solutions (Co.)	Baraboo, WI	01/14/2002	NAFTA–5,731	Transformers.
New Era Textile Parts (Co.)	Gastonia, NC	01/11/2002	NAFTA–5,732	Card screens and card plates.
Charmilles Technologies (Wkrs)	Owosso, MI	01/11/2002	NAFTA–5,733	Electrical discharge machinery.
Emerson (Co.)	Oxford, MS	01/08/2002	NAFTA–5,734	Fractional horse power motor.

[FR Doc. 02–1781 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04606]

Collis, Inc., Elizabethtown, Kentucky; Notice of Revised Determination on Reconsideration

On December 17, 2001, the Department, issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on August 8, 2001, because criteria (3) and (4) of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. There was no company imports from Canada or Mexico, nor was production shifted from the subject facility to Mexico or Canada.

New information received by the Department shows that a meaningful portion of plant production was shifted to Mexico during the relevant period. The workers at the subject plant were engaged in employment related to the production of residential refrigerator shelves and were not separately identifiable by product line.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Collis, Inc., Elizabethtown, Kentucky who became totally or partially separated from employment on or after February 16, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 14th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1778 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5418]

CTI Audio, Inc., Conneaut, Ohio; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 11, 2001, in response to a petition filed by a company official, on behalf of workers at CTI Audio, Inc., Conneaut, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1772 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Nafta–05208]

Dunlap Sales, Inc.; Hopkinsville, Kentucky; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Dunlap Sales, Inc., Hopkinsville, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–05208; Dunlap Sales, Inc. Hopkinsville, Kentucky (January 3, 2002)

Signed at Washington, DC this 10th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–1776 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05329]

Emerson Process Management, Formerly Fisher Controls Regulator Division, McKinney, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for NAFTA Transitional

Adjustment Assistance on November 19, 2001, applicable to workers of Emerson Process Management, Regulator Division, McKinney, Texas. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63262).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of regulators for gas pipelines.

New findings show that the Department incorrectly identified the subject firm name. The Department is amending this certification determination to correctly identify the subject firm title name to read Emerson Process Management, formerly Fisher Controls, Regulator Division.

The intent of the Department's certification is to include all workers of Emerson Process Management, formerly Fisher Controls, Regulator Division, McKinney, Texas who were adversely affected by layoffs, declines in sales and production and a shift in production of regulators for gas pipelines to Mexico.

The amended notice applicable to NAFTA–05329 is hereby issued as follows:

All workers of Emerson Process Management, formerly Fisher Controls, Regulator Division, McKinney, Texas, who became totally or partially separated from employment on or after September 11, 2000, through November 19, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1779 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04636]

Freightliner LLC Truck Manufacturing and Parts Plant, Portland, Oregon; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 19, 2001, applicable to workers of Freightliner LLC, Truck Manufacturing Plant, Portland, Oregon. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63262).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medium and heavy-duty trucks.

New information shows that the Department incorrectly identified the subject firm name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read Freightliner LLC, Truck Manufacturing and Parts Plant.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Freightliner LLC, Truck Manufacturing and Parts Plant, Portland, Oregon, who were adversely affected by a shift in production of medium and heavy-duty trucks to Mexico.

The amended notice applicable to NAFTA—04636 is hereby issued as follows:

All workers of Freightliner, LLC, Truck Manufacturing and Parts Plant, Portland, Oregon, who became totally or partially separated from employment on or after March 9, 2000, through November 19, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1780 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5219]

Henry Manufacturing, Swat Fame, City of Industry, Los Angeles, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 16, 2001, in response to a petition which was filed on behalf of workers at Henry Manufacturing, Swat Fame, City of Industry, Los Angeles, California.

The U.S. Department of Labor was unable to locate an official of the company to obtain the information necessary to render a decision.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1777 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5602]

Intervet, Inc., Gainesville Facility; Gainesville, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on December 4, 2001, in response to a worker petition which was filed by the company on behalf of workers at Intervet, Inc., Gainesville Facility, Gainesville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1775 Filed 1–24–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5622]

Lexmark International, Lexington, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment

assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on December 5, 2001, in response to a worker petition which was filed by the company on behalf of workers at Lexmark International, Lexington, Kentucky.

The investigation revealed that on January 5, 2001, workers of the subject firm were certified eligible to apply for NAFTA–TAA under petition number NAFTA–4314, which does not expire until January 5, 2003.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1782 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5439]

Midwest Garment Co., Chesterfield, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on October 17, 2001, in response to a worker petition which was filed by the company on behalf of workers at Midwest Garment Company, Chesterfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–1787 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: January 24, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Nicholson, Personnel Officer, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). P.J. Winzer, who will serve as Chair, and Barbara Wade have been appointed as new members. John Seal, Clyde B. Blandford, Jr., and Robert Lawshe will continue to serve as members of the PRB.

Dated: January 17, 2002.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 02–1676 Filed 1–23–02; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Evaluation of Credit Union Non-Maturity Deposits; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: NCUA is soliciting public comment on a study by National Economic Research Associates (n/e/r/a), titled ''The Evaluation of Credit Union Non-Maturity Deposits.'' NCUA intends to consider whether to use the study to prepare examiner guidance on the appropriate treatment of these instruments in the assessment of interest rate risk.

DATES: Comments must be received on or before April 24, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Jeremy Taylor, Senior Investment Officer, Office of Investment Services, at the above address or telephone (703) 518–6620; or Dan Gordon, Senior Investment Officer, Office of Investment Services, at the above address or telephone (703) 518–6620.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA commissioned n/e/r/a, an economics-consulting firm, to complete a study of methods to value non-maturity shares. The study has been completed and is available following the text of this Request for Comments on the NCUA website at *http://www.ncua.gov/news/draftboardactions/BAM-01-12-13-6.pdf.* Alternatively, to get to the study from the NCUA website (*www.ncua.gov*), select News, then Proposed Rules, then select on the page that follows, Request for Comments ''The Evaluation of Credit Union Non-Maturity Deposits.'' It can also be obtained in hard copy by requesting it from the Office of Public and Congressional Affairs, 1775 Duke Street, Alexandria, Virginia, 22314–3428, telephone number (703) 518–6330.

NCUA believes the majority of credit unions would not be affected by the results of the n/e/r/a study, either because their interest rate risk profile is limited, or because they treat shares at par value for interest rate risk measurement purposes. This study will be most relevant to those institutions that assume non-maturity shares materially mitigate the risk of a high level of long-term assets.

Non-maturity shares include share drafts, regular shares and money market share accounts. Non-maturity shares may provide mitigation of interest rate risk to the extent they are a stable, low cost source of funds. Non-maturity shares have uncertain cash flows. This is because they have no contractual maturity and the dividends are set by the credit unions. Therefore, in interest rate risk assessment, credit unions must make assumptions on these cash flows.

NCUA in its asset liability review questionnaire provides guidance to examiners in establishing a scope for their review of a credit union's asset liability management (ALM), including assessment of interest rate risk. However, the questionnaire does not provide a framework for examiner review of non-maturity share assumptions.

The n/e/r/a study contains a comprehensive review of the literature

on valuing non-maturity deposits. It provides a conceptual evaluation of alternative methods, with an analysis of the costs and benefits of these methods. The study discusses implementation issues for NCUA and credit unions, and provides recommendations for the most suitable valuation approaches to meet NCUA and credit union needs. The study proposes effective maturities that may reasonably be used for credit union shares where the cash flows are not explicitly documented and modeled by the credit union. The study proposes a method to value these shares, and discusses the appropriate discount rate for these funds. The characteristics of credit union shares, and their differences from bank depository funds, are included in the discussion. Recommendations are also provided where credit unions analyze their cash flows from these shares.

The n/e/r/a study may be useful in evaluating net economic value (NEV) analysis. NEV analysis measures the potential effect of changes in interest rates on net economic value (NEV). NEV means the fair value of assets minus the fair value of liabilities. Valuation techniques used to estimate fair values require assumptions about maturities and interest rates to calculate the present value of cash flows of non-maturity shares. As with gap analysis and review of income simulation models, examiners judge whether these assumptions are reasonable.

B. Areas for Comment

When its analysis of the n/e/r/a study is completed, NCUA will likely use the conclusions to provide guidance for examiner ALM scope determination and evaluation of credit union interest rate risk models and consider what should be the next stage in the evaluation of these issues. NCUA desires to identify reasonable methods for assumptions, valuation techniques and estimated values for non-maturity shares.

NCUA is soliciting comments on the study. Specifically, the agency is interested in comment on the following issues.

(1) Provide specific comments on the study. If there are points with which you disagree or you believe are incorrect, provide both the specific citations in the study and the support for your conclusion.

(2) NCUA is considering establishing a ''safe harbor'' for non-maturity share assumptions, such as a maturity of 1.0 year for money market shares, 2.5 years for regular shares, and 3.0 years for share drafts. Examiners would judge these, or shorter, terms to be acceptable maturity assumptions for non-maturity shares. Please comment on whether this approach is reasonable.

(3) The characteristics of a non-maturity account, not its labeling, are important determinates of value. For example, two credit unions may have accounts labeled regular shares: the first credit union may rarely change the interest rate; in contrast, the second may reset the rate frequently, similar to a money market share account at the first credit union. What documentation, if any, would be appropriate to use ''safe harbor'' assumptions?

(4) A credit union might choose to use its own empirical analysis to demonstrate a risk mitigation value larger than a ''safe harbor'' assumption. NCUA examiners would expect a statistically valid empirical analysis to justify such values. Should NCUA use the validation guidelines addressed in Chapter VIII of the report? If not, please provide alternative guidelines you believe are appropriate and provide evidence to support your recommendation.

(5) Is there background information from sources other than those covered in the n/e/r/a study that NCUA should consider? Please indicate the source of the information and the results. If possible, provide complete copies of the studies or the analysis.

(6) NCUA is contemplating whether to conduct an empirical study of credit union non-maturity share behavior. Please provide specific recommendations on what should be included in such a study.

(7) Are there other considerations in the valuation of shares, beyond those discussed in the n/e/r/a study, which should be taken into account?

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1682 Filed 1–23–02; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–344 and 72–17]

Portland General Electric Company Trojan Nuclear Plant and Trojan Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Application Regarding Proposed Acquisition of Portland General Electric Company by Northwest Natural Holdco and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the indirect transfer of Facility Operating License No. NPF–1 for the Trojan Nuclear Plant (TNP or Trojan) and Materials License No. SNM–2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI) to the extent currently held by Portland General Electric Company (PGE), as part owner and licensed operator of TNP and the Trojan ISFSI.

According to an application for approval filed by PGE, Northwest Natural Holdco (NW Natural Holdco) has entered into an agreement to purchase all of the common stock of PGE from Enron Corporation (Enron). PGE, currently a wholly-owned subsidiary of Enron, would become a wholly-owned subsidiary of NW Natural Holdco, thereby effecting an indirect transfer of the TNP and Trojan ISFSI licenses, to the extent held by PGE, to NW Natural Holdco. No physical or operational changes are being proposed to TNP or the Trojan ISFSI in the application. No direct transfer of the licenses for TNP or the Trojan ISFSI would result from the change in ownership of PGE. PacifiCorp and the Eugene Water and Electric Board (EWEB), the other co-owners of TNP and the Trojan ISFSI, are not involved in the purchase of PGE, and the licenses as held by PacifiCorp and EWEB are not presently subject to any proposed transfer.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effectuating the indirect tranfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 13, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance

with the Commission's rules of practice set forth in 10 CFR part 2, subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.'' In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas R. Nichols, Esq., General Counsel, Portland General Electric Company, Suite 1700, 121 SW Salmon Street, Portland, Oregon 97204 (telephone number 503–464–8402); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 25, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 6, 2001, available for public inspection at the Commission's Public Document Room (PDR), 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*. 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, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, MD, this 17th day of January, 2002.

For the Nuclear Regulatory Commission.

David J. Wrona,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1720 Filed 1–23–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25370; (812–12654)]

Harbor Fund and Harbor Capital Advisors, Inc.; Notice of Application

January 16, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') to amend a prior order that granted an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order amending a prior order (the ''Prior Order'') that permits them to enter into and materially amend sub-advisory agreements without shareholder approval.[1]

Applicants: Harbor Fund (the ''Trust'') and Harbor Capital Advisors, Inc. (the ''New Adviser'').

FILING DATE: The application was filed on October 4, 2001 and amended on January 14, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 11, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: One SeaGate, Toledo, Ohio 43666.

FOR FURTHER INFORMATION CONTACT: Jean Minarick, Senior Counsel, at (202) 942–0527 or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. The Trust is an open-end management investment company currently composed of thirteen series (''Funds'').[2] The New Adviser, a wholly owned subsidiary of Robeco Groep, N.V., acts as investment adviser to the Trust and has the responsibility, subject to oversight by the board of trustees of the Trust (''Board'') to oversee the selection of investment sub-advisers (''Portfolio Managers'') which it selects and to recommend to the Trust's Board their hiring, termination and replacement. The New Adviser is registered under the Investment Advisers Act of 1940.

2. On October 21, 1997, the Trust and its prior investment adviser, then a wholly owned subsidiary of Owens-Illinois, Inc. (the ''Prior Adviser''), received the Prior Order permitting the Trust and the Prior Adviser to enter into and materially amend sub-advisory agreements (''Sub-Advisory Agreements'') for the Funds without obtaining shareholder approval.

[1] *Harbor Fund and Harbor Capital Advisors, Inc.*, Investment Company Act Release Nos. 22832 (Sept. 25, 1997) (notice) and 22863 (Oct. 21, 1997) (order).

[2] Applicants request that any relief granted also apply to any future series of the Trust and any other registered open-end management investment company or series thereof (a) that are advised by the New Adviser or any entity controlling, controlled by or under common control with the New Adviser, and (b) that use the management structure described in the application (''Future Funds,'' and together with the Funds, the ''Funds.'') Any Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The trust is the only existing open-end management investment company that currently intends to rely on the order. No Fund will have in its name the name of a Portfolio Manager, as defined below.

Applicants seek to amend the Prior Order to permit the New Adviser to enter into and materially amend Sub-Advisory Agreements for the Funds without obtaining shareholder approval. Except for the identity of the parent company, the New Adviser and the Prior Adviser are substantially similar in all material respects. The entire management team of the Prior Adviser has continued in their same capacities with the New Adviser. All key employees of the Prior Adviser have continued their employment with the New Adviser. Applicants also seek to modify condition 6 to the Prior Order to conform with recent precedent.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that amending the Prior Order as requested would be consistent with the standards of section 6(c) of the Act. The New Adviser employs the same manager-of-managers investment management approach as did the Prior Adviser and similarly holds itself out to the public as an investment adviser whose strength, experience and expertise lies in its ability to evaluate, select and oversee those Portfolio Managers who can add the most value to a shareholder's investment in a Fund. While the New Adviser is a new legal entity, its experience in operating as a manager-of-managers comes from the experience of its management and staff, all of whom were previously employed by the Prior Adviser.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of the Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the New Adviser has the ultimate responsibility to oversee Portfolio Managers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be persons each of whom is not an ''interested person'' (as defined in section 2(a)(19) of the Act) (the ''Disinterested Trustees''), and the nomination of new or additional Disinterested Trustees will be at the discretion of the then-existing Disinterested Trustees.

4. The New Adviser will not enter into a Sub-Advisory Agreement with any Portfolio Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust, the New Adviser or the Funds, other than by reason of serving as a Portfolio Manager to one or more of the Funds (the ''Affiliated Portfolio Manager'') without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the New Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, the New Adviser will furnish the shareholders of the affected Fund with all information about a new Portfolio Manager that would be contained in a proxy statement. This information will include any change in such disclosure caused by the addition of a new Portfolio Manager. The New Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The New Adviser will provide general management services to each Fund, including overall oversight responsibility for the general management and investment of each Fund's securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Portfolio Managers; (c) when appropriate, recommend to the Board the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (d) monitor and evaluate the performance of Portfolio Managers, including their compliance with the Fund's investment objectives, policies and restrictions; and (e) implement procedures to ensure that the Portfolio Managers comply with the Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of the New Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Portfolio Manager except for: (a) Ownership of interests in the New Adviser or any entity that controls, is controlled by, or is under common control with the New Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by, or is under common control with a Portfolio Manager.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1698 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45282; File No. SR–CHX–2001–30]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 21, 2001, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule, effective through June 30, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria described below. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to change its fee schedule to provide for assessment of a marketing fee of $.01 per share applicable to ''Subject Transactions''[3] in ''Subject Issues'' [4] occurring on or before June 30, 2002. The marketing fee would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently imposes a marketing fee under a provision of the CHX fee schedule that, by its term, would expire on December 31, 2001.[5] Under the system in place until December 31, 2001, the CHX calculates, bills, and collects the marketing fee and then remits the proceeds to the specialist firm that trades the Subject issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment for order flow arrangements relating to the Subject Issue, or in certain instances, to market makers who have contributed to market share growth. The CHX has also issued quarterly refunds of unspent marketing fee proceeds to market makers, floor brokers, and specialists, on a *pro rata* basis, for amounts in excess of $1,000.

The CHX is currently proposing to: (a) Extend the marketing fee provision until June 30, 2002; (b) modify the definition of Subject Issue to exclude issues other than ETFs' (c) revise the definition of Subject Transaction to include any trade with a customer where the order is delivered to the CHX via the MAX system; and (d) revise procedures to preclude assessment of the marketing fee against specialists in the case of transactions where market makers are exercising their entitlement rights under CHX rules.

The CHX states that the continued imposition of the marketing fee is intended to allocate equitably the financial burden of seeking order flow for Subject Issues. Prior to the establishment of the current fees program, according to the CHX, a CHX specialist trading a particular Subject Issue was the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as any licensing fees that the licensor of the product imposes.[6] The CHX also notes that, prior to the implementation of the current program, CHX market makers that participated in transactions in Subject Issues did not share any of these costs.

By extending the current payment for order flow program, the proposed rule change would continue to allow a specialist trading a Subject Issue to impose the marketing fee in instances where the specialist believes that it would be appropriate to allocate the financial burden of trading the Subject Issue among all those who trade it, including the specialist and market makers. The CHX believes that the proposed rule change will continue to provide specialist trading Subject Issues with sufficient incentive to continued their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act[7] in that it would provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change From Members, Participants or Others

The CHX neither solicited nor received written comments with respect to the proposed rule change.

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

[3] ''Subject Transaction'' means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] ''Subject Issue'' means any issue which constitutes an exchange-traded fund (''ETF'') and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (9b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10).

[6] Under the proposed rule change, the marketing fee would be assessed only against ETF products, which almost always have an associated licensing fee.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–30 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1702 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45300; File No. SR–NASD–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc.; To Amend NASD Code of Procedure Rule 9522

January 17, 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 January 4, 2002, 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 (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On January 11, 2002, NASD Regulation amended the proposal.[3] NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Code of Procedure Rule 9522, Initiation of Eligibility Proceeding; Member Regulation Consideration, to describe in the Rule the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(2)(A) No change.

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h–1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.]*;or*

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

* * * * *

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 its proposal and discussed any comments it received regarding the proposal. 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 proposes to amend Rule 9522 to expressly describe in the Rule those instances in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC–400 application in those cases in which the disqualifying event is excepted from the ''full'' notice requirements of Rule 19h–1 under the Act,[6] but where a ''short form'' notification to the SEC under Rule 19h–1 is still required.[7] The proposed rule change provides a complete description, within Rule 9522, of those cases in which the disqualifying event permits ''short form'' notification to the SEC under Rule 19h–1.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules 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.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 11, 2002 letter from Sarah J. Williams, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, NASD Regulation provided its rationale for waiver of the 30-day operative delay. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–(f)(6). The 60-day abrogation period runs from January 11, 2002, the date that NASD Regulation filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). NASD Regulation asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay.

[6] 17 CFR 240.19h–1.

[7] *See* Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (SR–NASD–99–76) at 48269.

[8] 15 U.S.C. 78o–3(b)(6).

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

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.

NASD Regulation has asked that the Commission waive the 5-day pre-filing notice requirement and accelerate the operative date. The Commission finds good cause to do so, because such designation is consistent with the protection of investors and the public interest. Rule 9522, in its current form, does not provide a full description of the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. Because the proposed rule change would amend Rule 9522 to provide a complete description of those cases in which the disqualifying event requires ''short form'' notification to the SEC under Rule 19h–1, the Commission finds waiver of the pre-filing notice requirement and operative delay is consistent with the protection of investors and the public interest. For these reasons, the Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period to allow the proposed rule change to be both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submission should refer to file number SR–NASD–2002–02 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1699 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that, should cases arise where approval of an MC–400 application for relief from NASD eligibility requirements does not reasonably fall within the scope of Rule 9522 as amended by this proposed rule change, the NASD must file a proposed rule change to amend the Rule.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45283; File No. SR–NASD–2001–84]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 by the National Association of Securities Dealers, Inc. To Change the Description of the Market Capitalization Listing Standard to Market Value of Listed Securities

January 15, 2002.

I. Introduction

On November 14, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change to modify the description of the market capitalization listing standard to market value of listed securities. Nasdaq is also proposing to provide a definition of the term ''listed securities'' in Nasdaq's Marketplace Rules.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal. On December 18, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

II. Description

The Exchange has proposed to amend the description of the market capitalization listing standard to market value of listed securities. One of the standards under which issuers can qualify for listing on The Nasdaq National Market (''National Market'') is to have a market capitalization of at least $75,000,000. Issuers may also qualify for continued inclusion on the National Market with at least $50,000,000 in market capitalization. The minimum market capitalization standards for initial and continued inclusion on The Nasdaq SmallCap

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45116 (November 28, 2001), 66 FR 63275 (December 5, 2001).

[4] *See* Letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 17, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the proposed rule change become effective on June 1, 2002.

Market are $50,000,000 and $35,000,000, respectively.

For purposes of initial listing eligibility, Nasdaq has historically interpreted the term market capitalization to include only the value of listed securities. In connection with continued listing eligibility, however, Nasdaq has also considered market capitalization to include classes of non-redeemable convertible preferred stock, provided that the conversion price was ''in the money.'' According to Nasdaq, this approach has created uncertainty among issuers and investors as to the definition and application of the market capitalization listing standard. In addition, Nasdaq's Marketplace Rules do not define market capitalization and Nasdaq believes that this term may be thought to include more than just the value of listed securities or non-redeemable convertible preferred stock that is in the money.

Accordingly, Nasdaq is amending the description of the market capitalization listing standard so that it is based on the market value of listed securities. In conjunction with this change, Nasdaq also is adding a definition of the term ''listed securities'' to Nasdaq's Marketplace Rules. Nasdaq believes that these modifications will clarify for issuers and investors that initial and continued listing eligibility will be based only upon the value of an issuer's securities that are quoted on Nasdaq or listed on a national securities exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] In particular, the Commission believes that the proposal is consistent with the requirements of sections 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules are 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.

The Commission believes that the rule change should clarify the standards under which issuers can qualify for listing on the National Market. In particular, the rule change should clarify for issuers and investors that initial and continued listing eligibility will be based only upon the value of an issuer's securities that are quoted on Nasdaq or listed on a national securities exchange.

IV. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, Nasdaq notified the Commission that in order to minimize the impact of the proposed rule change on existing issuers, the rule will go into effect on June 1, 2002. The Commission believes that this is a suitable delay to allow issuers listed on the National Market to become informed of the rule change and prepare accordingly. Therefore, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.[7]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–84 and should be submitted by February 14, 2002.

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2001–84) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1703 Filed 1–23–02; 8:45 am]

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[5] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(2) and (6).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No 34–45285; File No. SR–NASD–2001–93]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Fees Associated With the Nasdaq Application of the Primex Auction System™

January 15, 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 17, 2001, the National Association of Securities Dealers, Inc., (''NASD'' or ''Association'') through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. Nasdaq will not assess fees pursuant to this fee schedule for approximately the first three months after the Nasdaq application of the Primex Auction System (''Primex'' or ''System'') is operational.[3] Nasdaq intends to begin assessing fees pursuant to this fee schedule beginning on April 1, 2002. However, Nasdaq will issue a Head Trader Alert to notify users of the exact date it will begin assessing fees. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As described above, Nasdaq will not assess any fees pursuant to the fee schedule during the initial few months the System is operating, which also means Nasdaq will not share any transaction fees in accordance with the fee schedule during such period. However, Primex Trading N.A., L.L.C., an entity independent of Nasdaq and the licensor of the System, has indicated it will pay any revenue sharing amounts earned by participants during such period.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish the fee schedule for Nasdaq's application of the Primex Auction System.™ Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(q) No changes.

(r) Nasdaq Application of the Primex Auction System™

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) *Transaction Charges:*	
Execution Services—for all participants:	
Order entry	*No fee.*
*Auction Response (per share, per execution—$5.00 maximum).**	*$.01.*
Matching Rights—Primex Auction Market Markers (PAMMs) only:	
50 Percent Match	*No fee*
*Two-Cent Match (per share, per retained order—$2.50 Maximum.*****	*$.0025.*
Revenue Sharing—PAMMs only:	
*Each order executed:****	*1/3 of traction fee.*
(2) Monthly Access fees:	
Software:	
Workstation license or unique logon:	*Per workstation logon:*
Stations/logons 1–10	*$200.*
Stations/logons 11–25	*$100.*
Stations/logons 26 and above	*$50.*
Proprietary interface license:	*Per license:*
API specification	*$500.*
FIX (customized protocol)	*$500.*
Network:	
Dedicated line:	*Per line:*
256K primary with backup	*$1,564.*
Installation/Uninstall	*$1,000 per Nasdaq Staff site visit.*

* This fee applies to both Indications and ''real-time'' Responses. When two orders match directly, a fee is charged to the party that entered the second order.

** This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

*** Paid to PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a quarterly basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 17, 2001, Nasdaq filed a Form PILOT to commence operation of the Primex System.[4] The System is designed to replicate, in an electronic form, the competitive trading crowd that is associated with an auction market. The System is completely voluntary and available to any NASD member in good standing. Non-NASD members can access the System through an NASD member that subscribes to Primex. Members that desire access to the System must execute the necessary agreements with Nasdaq. Members granted access to the System are referred to as Participants. There are two types of Participants in Primex: (1) Crowd Participants, and (2) Primex Auction Market Makers (''PAMMs'').

By becoming a Participant, members automatically receive the right to trade as Crowd Participants. Crowd Participants can view all orders exposed in the System; interact with any order put to auction by responding to the auction using all of the System's response tools; submit orders to be auctioned; and trade as principal, agent, or riskless principal. Crowd Participants can interact with orders being auctioned by submitting Indications, which are instructions to the System that can reside within the System and automatically respond in a certain manner to an auction if and when orders put to auction are available, or by submitting a Response. A Response is an individual instruction that is entered and responds in ''real time'' to orders being auctioned. A firm that elects to register as a PAMM has the same rights and entitlements as Crowd Participants, but because they elect to meet other additional qualifications,[5] PAMMs are entitled to additional privileges. For example, PAMMs are entitled to use the System's automated Match Parameters allowing them to participate in the execution of their own customer orders submitted to the System (*e.g.,* the Two Cent Match Parameter or the 50% Match Parameter[6]). PAMMs also are entitled to

[4] The Form PILOT was amended on November 26, 2001. *See* Letter from Peter R. Geraghty, Associate General Counsel, Nasdaq, to John Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated November 26, 2001.

[5] The requirements to become and maintain registration as a PAMM are contained in NASD Rule 5020. In general, a PAMM for a particular security eligible for trading in the System must be either: (1) A Nasdaq market maker in the security, if the security is listed on Nasdaq; or (2) a Consolidated Quotation System market maker, if the security is listed on an exchange. PAMMs may retain their PAMM status for a prospective calendar quarter provided they had qualified by submitting to the System a minimum percentage of certain order-types in the previous calendar quarter, as detailed in NASD Rule 5020. There never is any requirement for participants to register as a PAMM or to submit any amount of orders at any time.

[6] A complete description of the matching parameters and their operation are contained in NASD Rule 5014. Generally, however, when a PAMM submits an order to the System with the 50% Match parameter, the order will be executed

revenue sharing, allowing PAMMs to share in the transaction fee paid by other participants when such participants execute against an order submitted to auction by a PAMM.

Nasdaq will impose monthly fees to access the System. These fees vary based on the method chosen by the Participant to access the System. The System will operate on a network that is independent from Nasdaq's other existing systems (*e.g.,* SuperSoes℠). Primex Participants will be charged a monthly fee for this independent network. In addition, Participants will be charged for each visit by Nasdaq staff to install, or uninstall, software or hardware necessary to access the System.

In addition to monthly charges, Nasdaq will impose fees based on orders executed through the System. As set forth in the schedule of fees, no fee is charged for submitting an order to auction, and in general no fee is charged to have such orders executed.[7] Execution fees are only charged against Participants that extract liquidity by responding to, and executing against, orders submitted for auction. This execution fee is a penny per share with a maximum charge of $5.00 per execution. Accordingly, the fee would be charged to a Participant for any execution resulting from that Participant's Indication or real-time Response that interacted with an order put to auction.

In addition, and as discussed above, PAMMs have the option of attaching certain matching rights on orders they submit to the System. Nasdaq will impose a fee when a PAMM utilizes the Two-Cent Match feature and retains an order for execution. In such circumstances, the PAMM will be charged $.0025 per share, with a $2.50 maximum per retained order. If the PAMM does not retain the order because the order is executed against the Crowd Participant(s) who has offered more that two cents of price improvement, there is no charge to the PAMM. Instead, Nasdaq will share with the PAMM one-third of the transaction fee collected for such transaction. Nasdaq has decided to share the transaction fee in these circumstances to encourage PAMMS to submit orders for auction in the System. The revenue sharing amounts will be paid on a quarterly basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act[8] in that the proposed fees provide for the equitable allocation of reasonable fees among members. The fees apply equally to all Participants in the System, based upon the category the member has chosen to participate in the System. All members in the same category of Participant (*e.g.,* PAMM) are subject to the same fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] in that it establishes the fee schedule for the use of a Nasdaq system.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–2001–93 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1705 Filed 1–23–02; 8:45 am]

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against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the System to provide the order with an additional execution of like size and price against the PAMM that entered the order.

[7] The one exception is where an order submitted to auction directly meets and interacts with another order submitted to auction, in which case the second order is treated as a Response, and is charged a fee accordingly.

[8] 15 U.S.C. 78k–1(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45301; File No. SR–PCX–2001–45]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Inactive Lessors' Eligibility To Serve on the Board of Governors

January 17, 2002

On December 7, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article III, Section 2(b) of the PCX Constitution and PCX Rule 1.1(h) to provide for the eligibility of inactive lessors to serve on the PCX Board of Governors (''Board'').

The proposed rule change was published for comment in the **Federal Register** on December 17, 2001.[3] The Commission notes that the proposed rule change was noticed for a 15-day comment period, and the Commission received no comments regarding the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45144 (December 10, 2001), 66 FR 65015.

Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal to clearly establish that PXC inactive lessors are eligible to serve on the PCX Board is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principals of trade and to protect investors and the public interest. Inactive lessors have a financial interest in the activities of the Board and the Exchange due to their ownership of an Exchange membership. The Commission finds that allowing inactive lessors to serve on the Board is a fair and reasonable practice to provide inactive lessors and their interests to be represented on the Board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PCX–2001–45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–1741 Filed 1–23–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45295; File No. SR–Phlx–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend a PACE Order Execution and Price Protection Pilot Program

January 16, 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 January 8, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange field this proposal under section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through April 15, 2002 its PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] order execution and price protection pilot program (''pilot''). The pilot, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates decimal pricing into two PACE provisions—immediate execution of certain market orders through the Public Order Exposure System (''POES'') and mandatory double-up/double-down price protection for equities trading in decimals. The pilot has been in effect since August 25, 2000.[6] The only substantive change proposed in this filing is to extend the date of effectiveness of the pilot through April 15, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot through April 15, 2002. No other substantive changes are proposed at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[7] in general, and in particular, with section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day prefiling notice requirement, and the 30-day operative delay.

[5] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] The pilot was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). The pilot has been extended several times, most recently through January 14, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); and 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102). The price improvement portion of the pilot program (Supplementary Material .07(c)(i) to Rule 229) has been replaced by a price improvement pilot program with an automatic price improvement feature based on decimal trading, including a percentage of the spread between the bid and the offer. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001)(SR–Phlx–2001–12).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number SR–Phlx–2002–03, and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1700 Filed 1–23–02; 8:45 am]

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[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45288; File No. SR–Phlx–2001–107]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Interim Intermarket Linkage Program

January 16, 2002.

On November 29, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to extend the pilot program authorizing implementation of ''interim linkages'' with the other options exchanges until April 1, 2002.[3]

The proposed rule change was published for comment in the **Federal Register** on December 12, 2001.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change should enable investors effecting transactions on the Phlx to obtain better prices displayed on the other exchanges and therefore is consistent with the objects of section 6(b)(5) under the Act[7] which requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–2001–107) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1701 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

[3] On May 16, 2001, the Commission issued a notice of filing and immediate effectiveness of a pilot program submitted by the Phlx authorizing the implementation of an interim linkage. *See* Securities Exchange Act Release No. 44311, 66 FR 28768 (May 24, 2001).

[4] *See* Securities Exchange Act Release No. 45132 (December 5, 2001), 66 FR 64330.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 16 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45289; File No. SR–Phlx–2001–117]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase to the Exchange Technology Fee

January 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to increase its technology fee applicable to all members and foreign currency options participants not also holding legal title to a Phlx membership from the current charge of $100.00 per month to $150.00 per month. The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange charges a monthly technology fee on its members and foreign currency options participants that are not also holding legal title to a Phlx membership. This charge of $100.00 per month was instituted in March of 1997 at the rate of $100.00 to cover system software modifications, specific systems development (maintenance) costs, increased costs associated with the Securities Industry Automation Corporation, and the Options Price Reporting Authority communication changes and ongoing system maintenance charges.[3] Over the four and one half years since the technology fee was instituted, the complexity and expansion of the software and hardware, such as LANs, servers, and communications systems (both wireless and hardwired/tethered) has increased to serve the membership and the investing public. The Exchange's Board believes an increase to the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology on the trading floors to facilitate trading.

The technology fee was instituted to capture costs associated with system development costs associated with new risk management systems, order handling rule revisions, specialized quote feeds, and new products. Over the past four plus years, the Exchange's software and hardware systems have grown in order to process increased trading, resulting in more systems maintenance costs. The proposed increase in the technology fee is necessary to allow the Exchange to continue to operate its automated systems and compete with the other market centers in offering new technology features to facilitate trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] as establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[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 filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–117 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1704 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[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).

DEPARTMENT OF STATE

[Public Notice 3890]

30-Day Notice of Proposed Information Collection: Proposal Submission Instructions: Department of State Forms DS–2011, DS–2012, DS–2013, DS–2014, DS–2015, DS–2016, DS–2017, and DS–2018 (OMB Control #1405–0115)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a currently approved collection.

Originating Office: ECA–IIP/EX.

Title of Information Collection: Proposal Submission Instructions (PSI).

Frequency: 40 times a year (average), coincidental with Request for Grant Proposal competitions published in the **Federal Register**.

Form Number: DS–2011, DS–2012, DS–2013, DS–2014, DS–2015, DS–2016, DS–2017, DS–2018.

Respondents: Public and private non-profit organizations meeting the provisions described in IRS Code section 26 USC 501(c)(3).

Estimated Number of Respondents: Approximately 800 proposals will be submitted to the Bureau annually, accompanied by the Proposal Submission Instructions (PSI).

Average Hours Per Response: 20 hours per response.

Total Estimated Burden: 14,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from ECA–IIP/EX/PM, 301 4th Street, SW, (202) 619–5416, U.S. Department of State, Washington, DC 20547. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: November 29, 2001.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1803 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3894]

Bureau of Consular Affairs, Passport Services; 30-Day Notice of Information Collection: Form DS–11, Application for Passport/Registration (OMB Control #1405–0004)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, without change, of previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Application for Passport/Registration.

Frequency: On Occasion.

Form Number: DS–11.

Respondents: Individuals or Households.

Estimated Number of Respondents: 6.5 million.

Average Hours Per Response: ⅓ hr. (20 minutes).

Total Estimated Burden: 2,166,666 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW, Room H904, Washington, D.C. 20522, and at 202–663–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: December 20, 2001.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–1805 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3895]

Culturally Significant Objects Imported for Exhibition; Determinations: ''The Age of Impressionism: European Masterpieces From Ordrupgaard, Copenhagen''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Age of Impressionism: European Masterpieces from Ordrupgaard, Copenhagen'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Walters Art Museum, Baltimore, MD, from on or about February 17, 2002, through May 26, 2002, the Metropolitan Museum of Art, New York, NY from on or about June 17, 2002, through September 8, 2002, and the Museum of Fine Arts, Houston, TX, from on or about October 6, 2002, through January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: January 17, 2002.

Brian Sexton,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1806 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3896]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Sacred Spaces of Pieter Saenredam''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''The Sacred Spaces of Pieter Saenredam,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about April 16, 2002, to on or about July 7, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: January 17, 2002.

Brian J. Sexton,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–1807 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3893]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Three Chinese Entities, Including Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that three Chinese entities have engaged in activities that require the imposition of measures pursuant to section 3 of the Iran Nonproliferation Act of 2000.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: On general issues: Pamela K. Roe, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to sections 2 and 3 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on January 11, 2001, that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

Liyang Chemical Equipment (China) and any successor, sub-unit, or subsidiary thereof.

Q.C. Chen (China).

China Machinery and Electric Equipment Import and Export Company and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons.

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: January 16, 2002.

Vann H. Van Diepen,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–1804 Filed 1–23–02; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Consideration of Two Petitions To Alter AGOA Benefits for Canned Pears and Manganese Metal; Notice of Review Timetable and Public Hearings Regarding These Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Trade Policy Staff Committee (TPSC) provides this notice to identify the Harmonized Tariff Schedule of the United States (HTS) numbers of two articles proposed for designation or termination as GSP-eligible articles when imported from African Growth and Opportunity Act (AGOA) beneficiary countries (*see* ANNEX). This notice also sets forth the timetable for public hearings for GSP Subcommittee consideration in reviewing the articles for GSP eligibility, and the procedures for further public comment.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, Room F220, 1724 F Street, NW., Washington, DC 20508. Telephone: (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program grants duty-free treatment to designated eligible articles imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*). The GSP program was implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations. Legislation amending the GSP program to, inter alia, extend GSP benefits to AGOA beneficiaries through September 30, 2008, was signed by the President on May 18, 2000 (19 U.S.C. 2462–67).

In a notice dated April 13, 2001, the United States Trade Representative (USTR) initiated the 2001 GSP Annual Review and announced a deadline of June 13, 2001, for filing petitions (63 FR 1893). The GSP Subcommittee of the TPSC has considered only those petitions involving AGOA benefits; the GSP program remains in effect for AGOA beneficiaries, notwithstanding the expiration of the GSP program for all other beneficiary countries on September 30, 2001.

The Annex to this notice sets forth the case number, U.S. HTS number, change requested and petitioner for each AGOA petition that has been accepted for review.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR part 2007, including sections 2007.0 and 2007.1. All submissions should identify the subject article(s) in terms of the current U.S. HTS nomenclature.

Comments should be submitted, in English, to the Chairman of the GSP Subcommittee by facsimile at (202) 395–9481. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''Business Confidential'' status pursuant to 15 CFR 2003.6, and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains confidential information, a confidential version of the submission also should be submitted. In addition, any document containing confidential information should be clearly marked ''Confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information also should be clearly marked at the top and bottom of every page (either ''Public Version'' or ''Nonconfidential''). Comments should be submitted no later than 5 p.m. on February 20, 2002.

Notice of Public Hearings

Hearings will be held on March 5, 2002, beginning at 10 a.m. at the Office of the United States Trade Representative, Annex, 1724 F Street, NW., Washington, DC 20508. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witnesses representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by a written brief or statement, in English, and should be received by 5 p.m. on February 20, 2002. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted, in English, no later than 5 p.m. on March 2, 2002. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5 p.m. on February 20, 2002, and post-hearing and rebuttal written briefs or statements by March 20, 2002. Comments by interested persons on the U.S. International Trade Commission (USITC) Report prepared as part of the product review should be submitted in English, by 5 p.m. on May 22, 2002.

Jon Rosenbaum,

Assistant USTR for Trade and Development and, Chairman, GSP Subcommittee, Trade Policy Staff Committee.

Annex

Case Number	HTS Subheading	Article	Petitioner
		[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petition to add a product to the list of eligible articles for the Generalized System of Preferences only for countries designated as a beneficiary sub-Saharan African country in general note 16 of the Harmonized Tariff Schedule of the United States (HTS).	
2001-AGOA-1	8111.00.45 pt	Manganese and articles thereof, including waste and scrap: [Waste and scrap] Other: Unwrought manganese: Flake containing at least 99.5% by weight of manganese	Eramet Marietta Inc., Marietta, OH; Manganese Metal Company (Pty) Ltd., South Africa
B.		Petition to remove a product from the list of articles eligible for the Generalized System of Preferences only for countries designated as a beneficiary sub-Saharan African country in general note 16 of the HTS.	
2001-AGOA-2	2008.40.00	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Pears	Northwest Horticultural Council, Yakima, WA; Pacific Northwest Canned Pear Service, Yakima, WA; California Pear Advisory Board, Sacramento, CA; Washington-Oregon Canning Pear Assn., Yakima, WA; Pacific Coast Producers, Lodi, CA; Signature Fruit Co., LLC, San Roman, CA

[FR Doc. 02–1683 Filed 1–23–02; 8:45 am]
BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Abernathy Municipal Airport, Abernathy, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Abernathy Municipal Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Russell, City Manager, at the following address: City of Abernathy, PO Box 310, Abernathy, Texas 79311.

FOR FURTHER INFORMATION CONTACT: Ms. Kimchi Hoang, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5681, e-mail: *Kimchi.Hoang@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Abernathy Municipal Airport under the provisions of the AIR 21.

On January 16, 2002, the FAA determined that the request to release property at Abernathy Municipal Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole on in part, no later than March 31, 2002.

The following is a brief overview of the request:

The City of Abernathy requests the release of 211.355 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The fair market value of the sale is appraised at $31,700 to be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the City Hall of Abernathy, telephone number (806) 298–2546 or at the Texas Department of Transportation, Aviation Division, 125 E. 11th Street, Austin, TX 78701–2483, Ms. Sandra Gaither, telephone number (512) 416–4544.

Issued in Forth Worth, Texas on January 16, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–1769 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Montgomery County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: James A. Cheatham, Division Administrator, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3461 OR Andrew L. Warren, District Administrator, Pennsylvania Department of Transportation, District 6–0, 7000 Geerdes Blvd., King of Prussia, PA 19406, (610) 205–6700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), Montgomery County, Chester County, Upper Marion Township, Norristown Borough, Bridgeport Borough, West Norriton Township, Lower Providence Township, Tredyffrin Township, Schuylkill Township and the Delaware Valley Regional Planning Commission will prepare and Environmental Impact Statement (EIS) to identify and evaluate alternatives for modifications to the US Route 23 corridor in Montgomery County, Pennsylvania. The proposed action would consider improvements in the following study area: north of the Schuylkill River to include Tropper Road (PA 363), Egypt Road and Main Street (Ridge Pike); west to US 422 and including the Valley Forge National Park; south along US 202 and east along US 202 and the Dannehower Bridge.

Included in the overall project will be the identification of a range of alternatives that meet the identified project needs, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is included as part of the project.

Documentation of the need for the project is being prepared. This process will identify the need for roadway improvements through the study area based on local and regional transportation demand, transportation system linkage and continuity, geometric criteria, highway safety, and local and regional community planning.

Alternatives that will be considered may include, but will not be limited to: No Build; Transportation Systems Management (TSM); upgrade existing PA 23 facility; construction on new alignment; upgrade of existing roadway network adjacent to, and supplementing PA 23 corridor traffic; and mass transit infrastructure upgrades and increased service. These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comment or questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: October 23, 2001.

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA

[FR Doc. 02–1696 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation and Notice of Cancellation

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses. The license listed below was not revoked; it was cancelled due to death of the license holder.

Name	License	Port Name
Isidore Cohen	01668	New York

December 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–1788 Filed 1–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Revocation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs broker license revocation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19

CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

Name	License	Port
Unimex Brokerage, Inc.	12585	El Paso

Dated: December 20, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–1789 Filed 1–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before March 25, 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 form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849.

Abstract: Sections 6402, 6404, sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit or interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governsments.

Estimated Number of Respondents: 125,292.

Estimated Time Per Respondent: 14 hours, 42 minutes.

Estimated Total Annual Burden Hours: 1,841,954.

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 14, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1679 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8838

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8838, Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

DATES: Written comments should be received on or before March 25, 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 form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

OMB Number: 1545–1395.

Form Number: 8838.

Abstract: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Current Actions: There are no changes being made to the Form 8838 at this time.

Type of Review: Extension of a current approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1000.

Estimated Time Per Respondent: 8 hrs., 14 min.

Estimated Total Annual Burden Hours: 8,440.

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 16, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1680 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12196

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12196, Small Business Office Order Blank.

DATES: Written comments should be received on or before March 25, 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 form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Small Business Office Order Blank.

OMB Number: 1545–1638.

Form Number: Form 12196.

Abstract: Form 12196 is used by Small Business Information and Development Centers and One-Stop Capital Shops to order IRS tax forms and publications for distribution to their clients. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

Current Actions: Form 12196 is used primarily by the Small Business Administration's Business Information Centers (BlCs) to order key IRS small business products. Last year, the IRS expanded the availability of the form to the Small Business Development Centers (SBDCs) and the Women Business Centers (WBCs) to order key IRS small business products that will benefit new small business owners/operators. Additional products were added to the form to expand distribution and increase availability of selected IRS educational products to new business start-ups.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2.

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 14, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–1681 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This

notice solicits comments for information needed to determine insured's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0120'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment by Attending Physician, VA FL 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from attending physician to determine the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: January 11, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1736 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0496]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0496.''

SUPPLEMENTARY INFORMATION:

Title: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

OMB Control Number: 2900–0496.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide the information needed to authorize payment of the insurance. The information is used to process the mortgage holder's claim.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at pages 57156–57157.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0496'' in any correspondence.

Dated: January 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1737 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0095.''

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant's eligibility for VA pension benefits is determined, in part, by countable income. VA Form 21–

4165 is used to develop the necessary income and asset information peculiar to farm operations. The information is used to determine whether the claimant is eligible for VA benefits. If eligibility exists, the information is used to determine the proper rate of benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at pages 57155–57156.

Affected Public: Individuals or households, and Farms.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0095'' in any correspondence.

Dated: January 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1738 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–81, Work Coordination. (This Clause will be renumbered as ''Alternate 1'' to VAAR Clause 852.236–80.)

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Supplement 1 (which will be renamed as ''Alternate 1'').

d. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Supplement 1 (which will be renamed as ''Alternate 1'').

e. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information is necessary for VA to administer construction contracts and to carry out its responsibility to construct, maintain and repair real property for VA.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at page 54342.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 4,802 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,311.

Estimated Number of Total Respondents: 3,534.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

Dated: January 11, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1739 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held February 7 and 8, 2002. This will be a regularly scheduled meeting for the purpose of reviewing the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m., and adjourn at 4:30 p.m.

The agenda for Thursday, February 7, will include a review of the activities and reported conclusions of the Under Secretary for Health (USH) Special Committee on PTSD. The Committee will also review areas of potential partnership with the USH's Committee regarding the effective treatment of traumatic stress disorders in veterans exposed to war-zone stressors while on active duty in the military.

On Friday, February 8, the Committee will review VA's activities in response to the terrorist attack against the World Trade Center in New York City. The Committee's focus will be on veterans' mental health needs in the wake of such attacks, VA's timely response to the readjustment needs of new eras of veterans engaged in the war against terrorism, and VA's role in homeland security and local community-based disaster response.

The agenda for both days will also include strategic planning sessions to formulate goals and objectives for the Committee field visit to VA facilities planned for later in the year. In addition, the Committee will formulate recommendations for inclusion in its annual report to Congress.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting may contact Alfonso R. Batres, Ph.D., M.S.S.W., Chief Readjustment Counseling Officer, Department of Veterans Affairs Headquarters Office at (202) 283–8967.

Dated: January 14, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–1740 Filed 1–23–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 16

Thursday, January 24, 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.

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards

Corrections

In proposed rule document 01–30788 beginning on page 66500 in the issue of Wednesday, December 26, 2001, make the following corrections:

§542.7 [Corrected]

On page 66507, in §542.7(b), in the second column, the first line should read ''(b) *Game play standards.* (1) The''.* * *

§542.9 [Corrected]

On page 66510, in §542.9(i), in the first column, the third line should read ''*card room.* (1) Promotional funds displayed''.* * *

§542.12 [Corrected]

1. On page 66515, in §542.12(j), in the first column, the first line should read ''(j) *Marker credit play.* (1) If a gaming''.* * *

2. On page 66516, in §542.12(k), in the first column, the second line should read ''*in the pit.* (1) For the purposes of this''.* * *

§542.13 [Corrected]

On page 66520, in §542.13(3), in the second column, the second line should read ''*standards.* (i) A Central computer acting as''.* * *

§542.14 [Corrected]

On page 66521, in §542.14(d), in the third column, the second line should read ''*standards.* (1) All transactions that flow''.* * *

§542.15 [Corrected]

On page 66522, in §542.15(c), in the second column, the first line should read '' (c) *Payment standards.* (1) All payments''.* * *

§542.23 [Corrected]

1. On page 66530, in §542.23(p), in the second column, the second line should read ''*record retention.* (1) All video recordings''.* * *

2. On the same page, in §542.23(r), in the second column, the second line should read ''(1) Surveillance personnel shall maintain a''.* * *

§542.31 [Corrected]

On page 66536, in §542.31(r), in the first column, the second line should read ''keys. (1) The physical custody of the keys''.* * *

§542.33 [Corrected]

1. On page 66538, in §542.33(t), in the second column, the first line should read ''(t) *Currency and coin.* (1) The''.* * *

2. On the same page, in §542.33(v), in the second column, the third line should read *record retention.* (1) All video recordings''.* * *

3. On the same page, in §542.33(x), in the third column, the second line should read ''(1) Surveillance personnel shall maintain a''.* * *

4. On the same page, in §542.33(y), in the first column, the first line should read ''(y) *Surveillance log.* (1) Surveillance''.* * *

5. On page 66539, the first column, in the first column, the nineteenth line should read **Tier C Gaming Operations**

§542.41 [Corrected]

On page 66541, in §542.41(g), in the first column, the first line should read ''(g) *Hard count room personnel.* (1) The''.* * *

§542.42 [Corrected]

On page 66545, in §542.42(n), in the first column, the first line should read ''(n) *Keno.* (1) The surveillance system''.* * *

[FR Doc. C1–30788 Filed 1–23–02; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register

Vol. 67, No. 16

Thursday, January 24, 2002

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25 CFR Part 542

RIN 3141–AA24

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§542.9 [Corrected]

On page 66510, in §542.9(i), in the first column, the third line should read ''*card room.* (1) Promotional funds displayed''.* * *

§542.12 [Corrected]

1. On page 66515, in §542.12(j), in the first column, the first line should read ''(j) *Marker credit play.* (1) If a gaming''.* * *

2. On page 66516, in §542.12(k), in the first column, the second line should read ''*in the pit.* (1) For the purposes of this''.* * *

§542.13 [Corrected]

On page 66520, in §542.13(3), in the second column, the second line should read ''*standards.* (i) A Central computer acting as''.* * *

§542.14 [Corrected]

On page 66521, in §542.14(d), in the third column, the second line should read ''*standards.* (1) All transactions that flow''.* * *

§542.15 [Corrected]

On page 66522, in §542.15(c), in the second column, the first line should read '' (c) *Payment standards.* (1) All payments''.* * *

§542.23 [Corrected]

1. On page 66530, in §542.23(p), in the second column, the second line should read ''*record retention.* (1) All video recordings''.* * *

2. On the same page, in §542.23(r), in the second column, the second line should read ''(1) Surveillance personnel shall maintain a''.* * *

§542.31 [Corrected]

On page 66536, in §542.31(r), in the first column, the second line should read ''keys. (1) The physical custody of the keys''.* * *

§542.33 [Corrected]

1. On page 66538, in §542.33(t), in the second column, the first line should read ''(t) *Currency and coin.* (1) The''.* * *

2. On the same page, in §542.33(v), in the second column, the third line should read *record retention.* (1) All video recordings''.* * *

3. On the same page, in §542.33(x), in the third column, the second line should read ''(1) Surveillance personnel shall maintain a''.* * *

4. On the same page, in §542.33(y), in the first column, the first line should read ''(y) *Surveillance log.* (1) Surveillance''.* * *

5. On page 66539, the first column, in the first column, the nineteenth line should read **Tier C Gaming Operations**

§542.41 [Corrected]

On page 66541, in §542.41(g), in the first column, the first line should read ''(g) *Hard count room personnel.* (1) The''.* * *

§542.42 [Corrected]

On page 66545, in §542.42(n), in the first column, the first line should read ''(n) *Keno.* (1) The surveillance system''.* * *

[FR Doc. C1–30788 Filed 1–23–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 24, 2002

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions to proposed amendments to the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The amendments are based on those proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The amendments include making districts producing more than 6 million pounds per year subject to volume regulations (rather than 15 million pounds); making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all processed cherries subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Remaining amendments pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy. The proposed amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: Written exceptions must be filed by February 13, 2002.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, FAX number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued on March 17, 2000, and published in the March 23, 2000, issue of the **Federal Register** (65 FR 15580).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin (hereinafter referred to as the order), and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Anne M. Dec whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of the order is based on the record of a public hearing held in Rochester, New York on March 27 and 28, 2000; in Grand Rapids, Michigan on March 29, 30, and 31, 2000; in Kennewick, Washington on April 4 and 5, 2000; and in Salt Lake City, Utah on April 6, 2000. Notice of the hearing was published in the **Federal Register** on March 23, 2000. The notice of hearing contained numerous proposals submitted by the Board, and one proposed by the Agricultural Marketing Service (AMS).

The Board's proposed amendments included making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Other amendments proposed by the Board pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform with the effectuated amendments.

Ninety-five witnesses testified at the hearing. These witnesses represented tart cherry growers, processors and marketers throughout the production area. Some witnesses supported the Board's proposed amendments, while others were opposed to some of the recommended changes. Most witnesses addressed the issue of whether all districts should be subject to volume regulation rather than only those with production in excess of 15 million pounds. Other amendments that generated considerable interest at the hearing were providing diversion credits for cherry juice and juice concentrate to certain markets and allowing additional alternates to serve at Board meetings when both a member and his or her alternate are unable to attend.

At the conclusion of the hearing, the Administrative Law Judge fixed July 7, 2000, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. That date was later extended to July 31, 2000, and then further extended to September 15, 2000. Two briefs were filed. A brief in support of the proposed amendments was filed by the Board. A brief in opposition to several of the proposed amendments was filed by the Oregon Tart Cherry Association.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether all districts in the production area should be subject to volume regulation rather than only those with annual production in excess of 15 million pounds;

(2) Whether Board membership should be allocated among districts based on levels of production and whether a corresponding change should be made in quorum requirements;

(3) Whether the Board should be able to designate any alternate to serve for a member at a Board meeting in the event that member and his or her alternate are unavailable;

(4) Whether the diversion and exemption provisions of the order should be clarified by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions;

(5) Whether specific authority should be added to the order to exempt or provide diversion credit for cherries exported to designated markets;

(6) Whether diversion credit should be provided for shipments of cherry juice and juice concentrate to established diversion markets;

(7) Whether to add specific authority for the transfer of diversion credits among handlers;

(8) Whether grower diversions that take place in districts that are subsequently exempt from volume regulation should qualify for diversion credit;

(9) Whether cherries in the inventory reserve should be able to be released for use in only certain designated markets;

(10) Whether the 10-percent reserve release for market expansion should only apply during years when volume regulations are in effect;

(11) Whether assessments should be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by grower diversion certificates;

(12) Whether to eliminate the requirement that differential assessment rates be established for various cherry products based on the volumes of cherries needed to produce those products and their relative market values; and

(13) Whether the Board should be able to use estimates other than the official USDA crop estimate in developing its marketing policy.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof. In the presentation of its findings and conclusions, the Department takes official notice, where appropriate, of certain facts and figures that were not available at the time of the hearing. These include statistics relative to the 2000 and 2001 tart cherry crops, free and restricted percentages established for those years, and changes that have been made in Board membership since the hearing.

Material Issue Number 1—Districts Subject to Volume Regulation

The order should be amended to provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation, rather than only those with annual production in excess of 15 million pounds.

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6

District	1997	1998	1999	2000	2001
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich.	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criteria for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150 percent
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon have reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001

to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more importantly, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (e.g., harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversion.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	%	Price	Income
Open Market	240,000	60	$0.14	$33,600

	Lbs.	%	Price	Income
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100		45,040
For a grower in a non-regulated district, income was estimated as follows:				
Open Market	400,000	100	$0.135	$54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

Witnesses stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (*e.g.,* susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that was comprised of older trees in 1998.

State	Percent acreage 21–25 years	Percent acreage 26+ years	Total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already ''done their part'' to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15 million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

The Department is proposing that § 930.52 of the order be amended by changing the threshold for regulation from 15 million pounds to 6 million pounds.

Material Issue Number 2—Allocation of Board Membership

The order should be amended to allocate Board membership based on a district's production level, rather than have a set number of members per district. Corresponding changes should be made in quorum requirements.

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members to represent growers and handlers in that district. One additional Board member is selected to represent the general public, and need not be from any specific area.

As originally constituted (and as was true at the time of the hearing), the

Board consisted of 18 members: 17 tart cherry growers and handlers, and 1 public member. Five of the nine districts, including all districts initially subject to volume regulation, were allocated more than one member. Those five districts were Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each were Oregon, Pennsylvania, Washington and Wisconsin.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation because it exceeds the 15-million pound production threshold, that district is entitled to a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation. However, this could be accomplished through informal rulemaking under the authority in § 930.21 which allows for the reestablishment of districts and the redistribution of membership among those districts.

Effective July 11, 2001, the Board was increased in size from 18 to 19 members [66 FR 35889, July 10, 2001]. A second member was added to represent the State of Washington (District 8) because, following harvest of the 2000 crop, it was determined that that district's annual average production for the 3 years 1998 to 2000 exceeded the 15-million pound threshold required for districts to become regulated. This is the only change that has been made in Board membership since the order's inception.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that each district should have at least one Board member to ensure that the interests of all regions of the production area are represented in Board deliberations and decisions. Additional members should be allocated among districts based on their production levels. This would recognize that the larger districts should have a greater voice in Board decisions because they are more greatly impacted by those decisions. Additionally, the record shows that the number of growers and handlers operating in a district is related to the volume of production in that district. For example, the three Michigan districts account for about 75 percent of total annual tart cherry production. About 71 percent of the growers, and almost half of the handlers operate in Michigan. The number of growers and handlers in the other districts are also related to the volume of production in those districts. Thus, the production levels among the districts are a good indication of the constituencies in those districts, and those districts with larger constituencies should have more representation on the Board.

The allocation of industry membership between growers and handlers would remain unchanged under this amendment. For districts with one member, that member could be either a grower or a handler. Districts with two members would have one grower and one handler member position. Districts with three members would have one grower member and one handler member, and the third position would alternate between a grower and handler member. Districts that are allocated four members would be entitled to two grower members and two handler members.

The major benefit of this amendment is that it would allow Board membership to be reallocated annually, and thereby more closely reflect changing production trends in the industry. This would include having representation of a district decrease when conditions so warrant.

The following table shows the difference that would have occurred in Board membership for the term of office that began July 1, 2001, if the proposed amendment were in effect compared to the actual representation under current order provisions.

District	Number of members under current provision	Number of members under proposed amendment
1—Northern Michigan	4	4
2—Central Michigan	3	3
3—Southern Michigan	2	2
4—New York	2	2
5—Oregon	1	1
6—Pennsylvania	1	1
7—Utah	2	2
8—Washington	2	2
9—Wisconsin	1	2
Total number of industry members	18	19

If the proposed amendment had been in effect, industry representation on the Board would have increased from 18 to 19 members. Total membership (including the public member) would have increased from 19 to 20 members. Wisconsin would have been entitled to two members rather than one member. Representation of the other eight districts would not have changed.

One witness testified in opposition to this proposal, stating that it would give Michigan more power in Board decisions. However, as the above table shows, Michigan would have gone from having 9 of 18 industry members (50 percent) to 9 of 19 industry members (47 percent). Looking at total membership (including the public member), Michigan would have gone from 9 of 19 seats (47 percent) to 9 of 20 seats (45 percent).

Committee members serve 3-year terms of office. The terms are staggered so that about one-third of the members are selected each year. The terms of office begin July 1 of each year. Final production figures for a crop year are typically available in September, and nominations are conducted early in the calendar year (January or February) for

the term that begins the following July 1. If this amendment is adopted, the Board as constituted at the time of the amendment would remain in effect. Reallocation of membership would take place prior to the next regularly scheduled round of nominations. If, for example, the amendment were to become effective in September 2002, reallocation would take place prior to the nominations scheduled for January or February 2003, for the term of office beginning July 1, 2003.

If a district were to lose a seat, and none of its members' terms were expiring, it would be necessary to determine which member would need to be removed from the Board. Testimony at the hearing suggested that the members of the district in question would likely be able to agree among themselves who should resign. If that proves not to be the case, the Board could recommend rules and regulations concerning how to determine which Board position should be abolished. To provide for this possibility, USDA is recommending that a new paragraph (i) be added to § 930.20 to authorize the establishment of any rules and regulations needed to implement the provisions of that section.

In determining which member should resign, however, it would be necessary to comply with the provisions of § 930.20 pertaining to allocation of membership between grower and handler positions. For example, if a district's representation was reduced from four members (two grower and two handler positions) to three members (two grower positions and one handler position), one of the handler member positions would have to be vacated.

In a related matter, § 930.32 of the order provides that 12 members of the Board constitute a quorum, and that two-thirds of the total membership must vote in favor of any Board action for it to pass.

With the Board initially established at 18 members and with the two-thirds voting requirement, a 12-member quorum was logical (since two-thirds of 18 is 12). However, the proposed revision to § 930.20 would result in a varying number of Board members over time. In the example shown above, the Board would have been expanded to 20 members (19 industry members and 1 public member). The two-thirds voting requirement in that case would require the affirmative votes of at least 14 members to pass any Board action. It would not be reasonable to have the quorum remain at 12 members, since that number of members would not be able to pass a vote. Therefore, it is recommended that § 930.32 be amended to provide that two-thirds of the Board membership constitutes a quorum.

Material Issue Number 3—Board Designation of a Temporary Alternate To Act for an Absent Board Member

The order should be amended to provide more flexibility for a Board member to designate someone to act in his or her place when that member and his or her alternate are unable to attend a Board meeting. However, this discretion should not be given to the Board or its chairperson in the event the member in question chooses not to designate another alternate to serve in his or her place.

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine geographic districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate choose to make such a designation, the Board's chairperson would be free to do so with the concurrence of a majority of present members.

In support of the Board's proposal, witnesses stated that it is important to have a full contingency of members present at each Board meeting to ensure full consideration of and deliberation upon program issues. Further, an empty seat constitutes a ''no'' vote, which could hamper Board decision-making. This is because all Board actions require the approval of at least two-thirds of its members. One witness suggested that without this proposed amendment, Board expenses could increase because additional meetings might be needed due to vacant member seats and the inability to garner the requisite number of votes for Board action.

Witnesses in opposition to this proposal opined that it is very important to maintain representation of all districts at each Board meeting. They stated that Board representation is allocated among the districts because the conditions in those districts vary. The record shows that there have been very few instances where Board members (and their alternates) have been unable to attend a meeting. The few times a seat was empty was when the member from district 5 (Oregon) or district 8 (Washington) was unable to be present due to airline delays because of bad weather or due to personal emergencies. Since most Board meetings are held in Michigan, it is likely that if the Board's proposed amendment had been in place, a person from Michigan would have been asked to fill the empty position. Witnesses from outside the State of Michigan strongly objected to this scenario.

The Department agrees that full participation at Board meetings should be encouraged. However, we also believe there is merit in allocating membership among districts, and that the conditions in one district may vary considerably from those in another. Further, growers and handlers in each district nominate the people they want to represent them at Board meetings. For these reasons, we conclude that a Board member should be able to choose another alternate to serve in his or her place when that member and that member's alternate are unavailable. However, this choice should remain with the member. If he or she chooses not to name someone to fill his or her seat and cast votes on his or her behalf, the choice should not then revert to the Board or its chairperson.

The record supports the conclusion that this proposal is not intended to change the composition of the Board with respect to grower versus handler representation. Therefore, a modification to the proposed amendment is made providing that in naming an additional alternate to act on his or her behalf, a Board member should designate an alternate from the same group (grower or handler) as that member. This would ensure appropriate grower and handler representation on the Board.

The proposed amendment of § 930.28 has been changed accordingly. Also, we have deleted the requirement that a member must choose an alternate ''from another district'' to act in his or her place. This would enable a member who is from a district with more than one member position to designate another alternate from the same district to act in his or her stead. The member would not be required to name an alternate from a different district to fill his or her seat.

Material Issue Number 4—Clarification of Diversion and Exemption Provisions

The diversion and exemption provisions of the order should be

clarified by eliminating certain cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions.

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries may be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for ''uses exempt under § 930.62.'' A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation. This part of § 930.58 would not change.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development received diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

Proponent witnesses asked that the authority in § 930.58 for growers to receive diversion certificates for uses exempt under § 930.62 remain in the order. This authority has been in the order from the time it became effective and would need to be implemented through rulemaking. Presently, grower diversion rules provide for two types of diversion: leaving cherries unharvested and in-orchard tank diversion. It could be possible for the Board to provide (with USDA approval) for a form of grower diversion that would be the same as an exempt use utilized by handlers under § 930.62. The intent would be to encourage growers to find new uses and new markets for their cherries.

To retain this authority, a conforming change is needed in § 930.62. That section of the order is proposed to be changed by, among other things, stating that diversion certificates shall not be issued for cherries used for exempt purposes. This revision was intended to apply to handlers and not to growers seeking diversion certificates for exempt uses. Thus, a clarification is being proposed in the regulatory text of § 930.62.

The Department is also proposing a conforming change in § 930.50 relating to the Board's marketing policy. That provision of the order specifies how free and restricted percentages are to be calculated. The order currently sets forth an ''optimum supply formula'' (OSF) which the Board must follow in its consideration of annual volume regulations. First, the Board considers the available supply of tart cherries, which is the sum of the crop estimate and the carry-in supply from previous crop years. The Board next computes the optimum supply and compares it with the available supply. If the available supply exceeds the optimum supply, a surplus exists, calling for the use of supply controls.

The optimum supply is defined as 100 percent of the average sales of the prior 3 years, reduced by the average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same 3 years. There is no mention of how cherries used for exempt purposes should figure into the equation.

Witnesses testifying at the hearing explained that exempt cherries should be treated in the same way as cherries qualifying for diversion credit in the OSF. That is, they should be deducted from the total sales figure. Paragraph (a) of § 930.50 is proposed to be revised accordingly.

Section 930.59 currently states that in some cases, handlers must notify the Board of their intent to divert cherries, while in other cases they must apply for and receive Board approval prior to diverting cherries. This decision proposes revising this section to provide that in all cases, handlers must notify the Board of their plans to divert cherries. This change was proposed by the Board, and is intended to simplify current procedures. It should be noted, however, that should additional safeguards be needed to ensure compliance with handler diversion procedures (i.e., that cherries receiving diversion credits are actually utilized in approved outlets), the Board has authority to recommend additional rules

and regulations. Such rules and regulations would require USDA approval through the informal rulemaking process.

The authority for this additional rulemaking is currently provided in §§ 930.30 and 930.31 of the order. These sections set forth the Board's powers and duties, which include recommending rules and regulations needed to effectively administer the provisions of the order. As a clarifying change, a new paragraph (f) is proposed to be added to § 930.59 to specify that the Board may establish (with USDA approval) rules and regulations necessary and incidental to the administration of the handler diversion provisions of the order.

One final conforming change is being proposed by the Department relative to the provisions concerning diversions and exemptions. At the hearing, it was clearly stated that if certain uses of cherries were exempt from regulation, handlers should be able to use cherries from their inventory reserves for those uses at any time. While this is currently permitted under the terms of § 930.62, we are proposing a clarifying change in § 930.54, Prohibition on the use or disposition of inventory reserve cherries. That section is also being proposed to be revised by deleting a reference to a nonexistent paragraph (b) of that section.

Material Issue Number 5—Exemption or Diversion Credit for Export Shipments

The order should be amended to provide specific authority to designate shipments to certain export markets as exempt or eligible for diversion credit.

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as being eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers in recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits has resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only.

Material Issue Number 6—Diversion Credit for Juice and Juice Concentrate

The order should be amended to provide that sales of cherry juice and juice concentrate may receive diversion credits if those sales are in outlets that have been designated as eligible for receipt of diversion credits.

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the proviso in § 930.59 (b) so that shipments of cherry juice and juice concentrate to approved diversion outlets may be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in the Pacific Northwest have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace could have resulted in an accompanying reduction in prices for juice. This could have unduly harmed the industry in Washington and Oregon. USDA therefore inserted a provision in § 930.59 to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with the order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00—$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was

about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was important that handlers in Washington be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

It should be noted that the intent of this amendment proposal is to make sales of juice and juice concentrate eligible for diversion credit only if those sales are in outlets that have been approved for diversion credit. Sales of juice and juice concentrate in the primary market would not be eligible for diversion credit. This would prevent the influx of heavy supplies of juice into primary markets, which would have the potential to harm processors who rely on a healthy juice market.

The Department is proposing that § 930.59 be amended by deleting the proviso in paragraph (b) of that section. We are also proposing a clarifying change in that paragraph to state that shipments of juice and juice concentrate would only be eligible for diversion credit if they are used in markets specifically approved as diversion outlets.

Material Issue Number 7—Handler Transfers of Diversion Credits

The order should be amended to provide specific authority for handlers to be able to transfer diversion credits.

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that this authority would provide additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This authority could also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversion to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversion (pounds)	Excess diversions credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversion (pounds)	Excess diversions credits (pounds)
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use. Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	''Free'' sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of ''free'' cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products.

The Board's proposal included the statement that transfers of handler diversion credits be allowed ''Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer * * *'' Testimony at the hearing indicated that rules to implement this transfer authority may be needed. The only example given was that uniform reporting requirements may be necessary (i.e., to make sure that handlers record transfers in the same way so that diversion credits are not counted to offset more than one handler's restricted obligation). No witnesses gave any examples of limitations on transfers that may be needed, but they wanted the flexibility to do that in the future if the need arises.

No opposition to this proposal was stated at the hearing or in the briefs filed.

This amendment would be implemented by adding a new paragraph (e) to § 930.59 to specifically authorize the transfer of handler diversions certificates.

Material Issue Number 8—Grower Diversion Certificates

The order should be amended to provide that diversion certificates issued by the Board to a grower remain valid even if that grower's district subsequently becomes exempt from volume regulation under § 930.52(d).

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers are already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy meeting is typically held a week or two after the release of the official USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete.

This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and it Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

There was no opposition to this proposed amendment expressed at the hearing or in the briefs filed after the hearing.

To implement this proposal, it is recommended that § 930.58(a) be revised by adding a sentence to that paragraph.

Material Issue Number 9—Release of Cherries in the Inventory Reserve

The order should be amended to provide that cherries in the inventory reserve may be released either for use in any market or for use in only certain designated markets, depending on prevailing market conditions.

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54 (a). The first, under § 930.50 (g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes, and is discussed more fully under Material Issue Number 10.

The second release, under § 930.50 (j) occurs in years when the expected availability from the current crop plus expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be ''free'' percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

There was no opposition to this proposed amendment.

The Department is recommending this proposal be implemented by adding a new paragraph (b) to § 930.54 to say that reserve cherries may be released for sale in certain designated markets. We are proposed adding a sentence to that new paragraph to state that these designated markets may be defined in terms of the use or form of cherries.

Material Issue Number 10—Ten Percent Reserve Release for Market Expansion

The order should be amended to provide that the 10-percent reserve release for market expansion apply only

during years when volume regulations are in effect.

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at the handler's facility, or shipment into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an ''optimum supply'' of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the optimum supply of free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10-percent reserve release only apply during years when volume regulations are in effect.

The record shows that the 10-percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10-percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more importantly, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversion (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the affects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

There was no opposition to this Board proposal expressed at the hearing or in the briefs filed.

The Department recommends amending § 930.50(g) to specify that when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. This release would not be required in years when restricted percentages are not established.

Material Issue Number 11—Assessments on All Cherries Handled

The order should be amended to provide that assessments be imposed on all cherries processed and sold by handlers. The only cherries that would not be assessed would be those diverted by handlers by destruction at their facilities and those diverted by growers in the orchard.

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their *pro rata* share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. If a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. It was concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses are incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (*e.g.,* new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

No objections were raised at the hearing or in the briefs concerning this amendment.

The Department proposes that § 930.41(c) be revised to state that assessments are due on all cherries handled except for those that are diverted by destruction at a handler's facility or are represented by valid grower diversion certificates. A conforming change is proposed in § 930.62 of the order which relates to exempt shipments. A conforming change is also proposed in § 930.51(c) which refers to diverted cherries being exempt from assessments.

Material Issue Number 12—Uniform Assessment Rate

The order should be amended to eliminate the requirement that different assessment rates be established for cherries used for manufacturing different products.

As discussed in the preceding material issue, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it take approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the recommended amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis. Paragraph (f) of § 930.41 has been revised accordingly.

Material Issue Number 13—Crop Production Estimate

The order should be amended to provide that the Board may use estimates other than the official USDA crop estimate in developing its annual marketing policy.

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the ''optimum supply'' which is defined as the average sales of cherries in the past three years plus the desirable carry-

out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by the States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces over 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

No opposition was expressed regarding this proposed amendment authorizing the Board to use estimates other than the official USDA estimates.

The Department is therefore recommending this change through a proposed amendment to § 930.50(b).

Conforming Changes

The Agricultural Marketing Service proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. Necessary conforming changes have been identified and discussed in this Recommended Decision under the pertinent material issue.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments could result in additional regulatory requirements being imposed on some tart cherry handlers, while regulatory burdens on other handlers could be reduced. Overall benefits are expected to exceed costs.

The record indicates that there are about 40 handlers regulated under Marketing Order No. 930. In addition, there are about 905 producers of tart cherries in the production area.

The record indicates that of the 41 tart cherry handlers operating during the 1999–2000 season, 7 had processed tonnage of more than 10 million pounds (or 17 percent of all handlers); 8 had between 5.1 and 10 million pounds (20 percent); 12 had between 2.1 and 5 million pounds (29 percent); and the remaining 14 had less than 2 million pounds of processed tonnage (34 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities.

Twenty handlers are located in Michigan—nine in district 1 (Northern Michigan), eight in district 2 (Central Michigan) and three in district 3 (Southern Michigan). Of the remaining 21 handlers, 4 are in district 4 (New York), 3 are in district 5 (Oregon), 1 is in district 5 (Pennsylvania), 3 are in district 7 (Utah), 5 are in district 8 (Washington), and 5 are in district 9 (Wisconsin). Many handlers process cherries grown in more than one district.

Of the 904 growers who produced cherries in 1999, 368 were in Northern Michigan (41 percent), 149 were in Southern Michigan (16 percent), 129 percent in Central Michigan (14 percent), 84 in New York (9 percent), 65 in Wisconsin (7 percent), 38 in Utah (4 percent), 29 in Pennsylvania (3 percent), 27 in Oregon (3 percent), and 17 in Washington (2 percent).

During the 3-year period 1999–2001, production of tart cherries averaged 300.6 million pounds. By district, Northern Michigan accounted for 44.0 percent of the production, followed by Central Michigan with 22.4 percent, Southern Michigan with 8.7 percent, Utah and Washington each with 6.6 percent, New York with 5.3 percent, Wisconsin with 3.4 percent, Pennsylvania with 1.7 percent, and Oregon with 1.3 percent.

Dividing total production by the number of growers, the average grower produces about 332,500 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $66,500. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition that was in effect at the time of the hearing. The evidence of record is that only 13 growers (or less than 2 percent of the total number of growers) produced 2.5 million pounds or more during the 1999–2000 crop year. Five of those growers (or 38 percent) were located in Northern Michigan (district 1) and three operated (23 percent) in Central Michigan (district 2). The remaining five growers in this category (38 percent) were distributed among the remaining seven districts. The distribution of large growers is thus in proportion to the overall distribution of growers among the districts.

A large majority (more than 98 percent) of the tart cherry growers falls into the previous SBA definition of a small entity (annual receipts of less than $500,000); it is reasonable to assume that an even greater majority qualify under the current SBA definition of a small grower (annual receipts of less than $750,000).

During the 3 years 1999 to 2001, the average grower accounted for about 333,000 pounds of cherries. By district, average grower size varies considerably. The average grower in Washington accounts for roughly 1,159,000 pounds of cherries. Next in size is Central Michigan with 530,000 pounds, followed by Utah (518,000 pounds), Northern Michigan (360,000 pounds), New York (191,000 pounds), Pennsylvania (179,000 pounds), Southern Michigan (177,000 pounds), Wisconsin (155,000 pounds) and Oregon (141,000 pounds).

This decision recommends that the order be amended: (1) To provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation rather than only those with annual production in excess of 15 million pounds; (2) To allocate Board membership among districts based on levels of production and make a corresponding change in quorum requirements; (3) To authorize a Board member to designate any alternate to serve for that member at a Board meeting in the event the member and his or her alternate are unavailable; (4) To clarify the diversion and exemption provisions of the order by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions; (5) To add specific authority to the order to exempt or provide diversion credit for cherries exported to designated markets; (6) To provide diversion credit for shipments of cherry juice and juice concentrate to established diversion markets; (7) To add specific authority for the transfer of diversion credits among handlers; (8) To provide that grower diversions that take place in districts that are subsequently exempt from volume regulation qualify for diversion credit; (9) To allow cherries in the inventory reserve to be released for use in only certain designated markets; (10) To specify that the 10-percent reserve release for market expansion only applies during years when volume regulations are in effect; (11) To require assessments to be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by a grower diversion certificate; (12) To eliminate the requirement that differential assessment rates be established for various cherry products based on the relative market values of such products; and (13) To allow the Board should to use an estimate other than the official USDA crop estimate in developing its marketing policy.

Industry Background

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995–96 through 1999–00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987–88 through 1997–98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999–00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999–00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop years 1987–88 through 1999–00, tart cherry production ranged from a high of 396.0 million pounds in 1995–96 to a low of 189.9 million pounds in 1991–92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude

of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since most tart cherries are either canned or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies. In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry would result in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

The free and restricted percentages established under the order release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from operation of the marketing order program are difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Districts Subject to Volume Regulation

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criteria for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150 Percent
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon have reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also

unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more importantly, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (*e.g.,* harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversion.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	Percent	Price	Income
Open Market	240,000	60	$0.14	$33,600
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100	.....	45,040
For a grower in a non-regulated district, income was estimated as follows:				
Open Market	400,000	100	0.135	54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

Witnesses stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (e.g., susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that was comprised of older trees in 1998.

State	Percent acreage 21–25 years	Percent acreage 26+ years	Percent total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already ''done their part'' to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15-million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

Allocation of Board Membership

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. The Board consists of 19 members: 18 tart cherry growers and handlers, and 1 public member.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. Six of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), Utah (two members), and Washington (two members). The three districts with one member each are Oregon, Pennsylvania, and Wisconsin. The nineteenth Board member is selected to represent the general public, and need not be from any specific area.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation, that district will get a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that this amendment could result in a larger number of Board members. Using average annual production figures for the years 1999 through 2001, one district (Wisconsin) would have been entitled to an additional Board member position for the term of office that began July 1, 2000. Thus, the total number of Board members under this proposed amendment would have increased to 20 members (versus 19 members under the provisions currently in effect).

An increase in the number of Board members would result in a marginal increase in Board expenses. This is because the Board reimburses members for costs incurred in attending Board meetings (travel costs, etc.). Since Board expenses are funded through handler assessments, all handlers would be impacted by slightly higher assessments.

However, these slight cost increases will be offset by better industry representation on the Board. Reallocating membership on an annual basis will allow membership to more closely reflect changing production trends in the industry. This should lead to better decision making by a more representative administrative body.

Designation of a Temporary Alternate To Act for an Absent Board Member

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate choose to make such a designation, the Board's chairperson would be free to do so (with the concurrence of a majority of present members).

The record supports the concept of allowing more flexibility for alternates to fill in for absent Board members. However, the Department is recommending a revision in the Board's proposal. This decision proposes allowing a Board member to designate an additional alternate to act in his or her place when that member and that member's alternate are unable to attend a Board meeting. However, if the member chooses not to name an additional alternate, that decision would not then revert to the Board or its chairperson.

This proposed amendment would allow more flexibility for Board members who cannot attend a Board meeting. It should also encourage a full contingency of voting members at Board meetings, while maintaining adequate representation among the districts comprising the production area. No additional costs should be incurred as a result of this change.

Clarification of Diversion and Exemption Provisions

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries must be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for ''uses exempt under § 930.62.'' A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development were eligible for diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from

regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

This proposed amendment is a clarification of the current order and its operation. It would not introduce new or different concepts. To the extent that it makes the order easier for growers and handlers to understand, it should be of benefit to the industry.

Exemption or Diversion Credit for Export Shipments

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as being eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers during recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only. It would impose no new or different regulatory requirements on the tart cherry industry.

Diversion Credit for Juice and Juice Concentrate

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the prohibition in § 930.59 (b) that shipments of cherry juice and juice concentrate to approved diversion outlets be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in that area of the country have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace and an accompanying reduction in juice prices could result. This would unduly harm the industry in the Washington and Oregon. USDA therefore inserted the provision to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00—$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the

U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5+1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was critical for handlers in Washington to be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

This proposed amendment would result in additional options for handlers in meeting their restricted obligations under the order. It would also encourage expansion of markets for U.S. tart cherry products, which should benefit the industry as a whole. It would not adversely impact the sale of juice and juice concentrate in primary markets; in fact, it could tend to strengthen prices in those markets. This is because more juice would likely be exported, which would reduce the supply available in the domestic market.

Handler Transfers of Diversion Credits

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that allowing transfers of diversion certificates provides additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This can also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversion to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversions (pounds)	Excess diversion credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use.

Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	"Free" Sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of ''free'' cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products. Allowing transfers of diversion certificates therefore has a positive impact on the industry.

Grower Diversion Certificates

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy is typically a week or two after the release of the USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete. This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

This amendment should benefit tart cherry growers who choose to divert cherries in anticipation of a volume regulation. It should also contribute to the supply management objectives of the program, which would benefit the U.S. tart cherry industry as a whole.

Release of Cherries in the Inventory Reserve

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54(a). The first, under § 930.50(g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes.

The second release, under § 930.50(j) occurs in years when the expected availability from the current crop plus

expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be ''free'' percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Ten Percent Reserve Release for Market Expansion

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an ''optimum supply'' of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10 percent reserve release only apply during years when volume regulation is in effect.

The record shows that the 10 percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10 percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more importantly, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversion (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the affects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Assessments on All Cherries Handled

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their pro rata share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. It was their opinion that if a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. Those in support of assessing all processed cherries concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses are incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (e.g., new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

This amendment would increase assessment obligations on handlers who choose to divert their restricted percentage cherries in approved outlets. However, it would also tend to result in a more reasonable assessment system.

Uniform Assessment Rate

As discussed in the preceding section, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In

their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it take approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the recommended amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis.

Implementation of this amendment could result in a single, uniform assessment rate applicable to all cherries. Such action would likely increase the rate established for cherries used for juice concentrate and puree, and could result in a lower rate for cherries used for other products. The impact of any such action would be analyzed by the Board and USDA prior to its effectuation.

Crop Production Estimate

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the ''optimum supply'' which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by those States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces over 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

The record shows that the USDA estimate should be used by the Board unless two things happen. The first would be that the Board would have to agree that the USDA estimate was inaccurate. The second would be that the Board would have to agree on another estimate or estimates to use. Both these actions would require concurrence by at least two-thirds of the Board members. This would safeguard against the possibility of some members attempting to manipulate the crop estimate to impact the level of volume restriction.

In addition, witnesses testified that other estimates used by the Board would have to be from other reliable, independent sources, and would be averaged in with the USDA estimate. Currently available is an annual estimate made by the Michigan Food Processors Association. Other possible sources include the Michigan Agricultural Cooperative Marketing Association and individual State grower associations.

This proposed amendment provides the Board with more flexibility in developing its marketing policy and

recommending preliminary free and restricted percentages. To the extent that the Board's decision making improves, the entire U.S. tart cherry industry would benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate so that this rulemaking may be completed prior to the upcoming season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order and the previously issued amendment thereto. All said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Recommended Amendment of the Marketing Agreement and Order

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

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

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

Authority: 7 U.S.C. 601–674.

2. Amend § 930.20 as follows:

a. By revising paragraphs (a), (b), (d) and (e);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and

c. Adding new paragraphs (f) and (i).

The additions and revisions read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the membership of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous

three year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members;

(4) Greater than 80 million pounds shall have 4 members; and

(5) Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members or	Handler members
Up to and including 10 million pounds	1	1
More than 10 and up to 40 million pounds	1	1
More than 40 and up to 80 million pounds	1	2
More than 80 million pounds	2	2

* * * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handlers members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to a district, then the Board shall be reestablished by the Secretary, and such seats shall be filled according to the applicable provisions of this part.

* * * * *

(i) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

3. Revise § 930.28 to read as follow:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided,* that such alternate represent the same group (grower or handler) as the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

4. Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

5. Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

* * * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided,* a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

* * * * *

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

* * * * *

6. Amend § 930.50 by revising paragraphs (a), (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: From the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated over-production which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

* * * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in

paragraph (a) of this section, for market expansion.

* * * * *

7. Amend § 930.51 by revising paragraph (c) to read as follows:

§ 930.51 Issuance of volume regulations.

* * * * *

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year.

* * * * *

8. Amend § 930.52 by revising paragraph (a) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 3 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 3-year period in which the 6-million pound average production requirement is exceeded in that district.

* * * * *

9. Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraphs (a), (b), or (c) of this section.

(a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets. Such designated markets may be defined in terms of the use or form of the cherries.

(c) Cherries in the primary and/or secondary inventory reserve may be used at any time for uses exempt from regulation under § 930.62.

10. Amend § 930.58 by revising paragraph (a) to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

11. Revise § 930.59 to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

12. Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) experimental purposes; or

(4) for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year

average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided,* that growers engaging in such activities under the authority of § 930.58 shall be issued diversion certificates for such activities.

Dated: January 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–1423 Filed 1–23–02; 8:45 am]

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Federal Register

Thursday,
January 24, 2002

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions to proposed amendments to the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The amendments are based on those proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The amendments include making districts producing more than 6 million pounds per year subject to volume regulations (rather than 15 million pounds); making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all processed cherries subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Remaining amendments pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy. The proposed amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: Written exceptions must be filed by February 13, 2002.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, FAX number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued on March 17, 2000, and published in the March 23, 2000, issue of the **Federal Register** (65 FR 15580).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin (hereinafter referred to as the order), and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Anne M. Dec whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of the order is based on the record of a public hearing held in Rochester, New York on March 27 and 28, 2000; in Grand Rapids, Michigan on March 29, 30, and 31, 2000; in Kennewick, Washington on April 4 and 5, 2000; and in Salt Lake City, Utah on April 6, 2000. Notice of the hearing was published in the **Federal Register** on March 23, 2000. The notice of hearing contained numerous proposals submitted by the Board, and one proposed by the Agricultural Marketing Service (AMS).

The Board's proposed amendments included making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Other amendments proposed by the Board pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform with the effectuated amendments.

Ninety-five witnesses testified at the hearing. These witnesses represented tart cherry growers, processors and marketers throughout the production area. Some witnesses supported the Board's proposed amendments, while others were opposed to some of the recommended changes. Most witnesses addressed the issue of whether all districts should be subject to volume regulation rather than only those with production in excess of 15 million pounds. Other amendments that generated considerable interest at the hearing were providing diversion credits for cherry juice and juice concentrate to certain markets and allowing additional alternates to serve at Board meetings when both a member and his or her alternate are unable to attend.

At the conclusion of the hearing, the Administrative Law Judge fixed July 7, 2000, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. That date was later extended to July 31, 2000, and then further extended to September 15, 2000. Two briefs were filed. A brief in support of the proposed amendments was filed by the Board. A brief in opposition to several of the proposed amendments was filed by the Oregon Tart Cherry Association.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether all districts in the production area should be subject to volume regulation rather than only those with annual production in excess of 15 million pounds;

(2) Whether Board membership should be allocated among districts based on levels of production and whether a corresponding change should be made in quorum requirements;

(3) Whether the Board should be able to designate any alternate to serve for a member at a Board meeting in the event that member and his or her alternate are unavailable;

(4) Whether the diversion and exemption provisions of the order should be clarified by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions;

(5) Whether specific authority should be added to the order to exempt or provide diversion credit for cherries exported to designated markets;

(6) Whether diversion credit should be provided for shipments of cherry juice and juice concentrate to established diversion markets;

(7) Whether to add specific authority for the transfer of diversion credits among handlers;

(8) Whether grower diversions that take place in districts that are subsequently exempt from volume regulation should qualify for diversion credit;

(9) Whether cherries in the inventory reserve should be able to be released for use in only certain designated markets;

(10) Whether the 10-percent reserve release for market expansion should only apply during years when volume regulations are in effect;

(11) Whether assessments should be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by grower diversion certificates;

(12) Whether to eliminate the requirement that differential assessment rates be established for various cherry products based on the volumes of cherries needed to produce those products and their relative market values; and

(13) Whether the Board should be able to use estimates other than the official USDA crop estimate in developing its marketing policy.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof. In the presentation of its findings and conclusions, the Department takes official notice, where appropriate, of certain facts and figures that were not available at the time of the hearing. These include statistics relative to the 2000 and 2001 tart cherry crops, free and restricted percentages established for those years, and changes that have been made in Board membership since the hearing.

Material Issue Number 1—Districts Subject to Volume Regulation

The order should be amended to provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation, rather than only those with annual production in excess of 15 million pounds.

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6

District	1997	1998	1999	2000	2001
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich.	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criteria for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150 percent
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon have reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001

to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more importantly, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (e.g., harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversion.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	%	Price	Income
Open Market	240,000	60	$0.14	$33,600

	Lbs.	%	Price	Income
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100		45,040
For a grower in a non-regulated district, income was estimated as follows:				
Open Market	400,000	100	$0.135	$54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

Witnesses stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (*e.g.,* susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that was comprised of older trees in 1998.

State	Percent acreage 21–25 years	Percent acreage 26+ years	Total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already ''done their part'' to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15 million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

The Department is proposing that § 930.52 of the order be amended by changing the threshold for regulation from 15 million pounds to 6 million pounds.

Material Issue Number 2—Allocation of Board Membership

The order should be amended to allocate Board membership based on a district's production level, rather than have a set number of members per district. Corresponding changes should be made in quorum requirements.

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members to represent growers and handlers in that district. One additional Board member is selected to represent the general public, and need not be from any specific area.

As originally constituted (and as was true at the time of the hearing), the

Board consisted of 18 members: 17 tart cherry growers and handlers, and 1 public member. Five of the nine districts, including all districts initially subject to volume regulation, were allocated more than one member. Those five districts were Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each were Oregon, Pennsylvania, Washington and Wisconsin.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation because it exceeds the 15-million pound production threshold, that district is entitled to a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation. However, this could be accomplished through informal rulemaking under the authority in § 930.21 which allows for the reestablishment of districts and the redistribution of membership among those districts.

Effective July 11, 2001, the Board was increased in size from 18 to 19 members [66 FR 35889, July 10, 2001]. A second member was added to represent the State of Washington (District 8) because, following harvest of the 2000 crop, it was determined that that district's annual average production for the 3 years 1998 to 2000 exceeded the 15-million pound threshold required for districts to become regulated. This is the only change that has been made in Board membership since the order's inception.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that each district should have at least one Board member to ensure that the interests of all regions of the production area are represented in Board deliberations and decisions. Additional members should be allocated among districts based on their production levels. This would recognize that the larger districts should have a greater voice in Board decisions because they are more greatly impacted by those decisions. Additionally, the record shows that the number of growers and handlers operating in a district is related to the volume of production in that district. For example, the three Michigan districts account for about 75 percent of total annual tart cherry production. About 71 percent of the growers, and almost half of the handlers operate in Michigan. The number of growers and handlers in the other districts are also related to the volume of production in those districts. Thus, the production levels among the districts are a good indication of the constituencies in those districts, and those districts with larger constituencies should have more representation on the Board.

The allocation of industry membership between growers and handlers would remain unchanged under this amendment. For districts with one member, that member could be either a grower or a handler. Districts with two members would have one grower and one handler member position. Districts with three members would have one grower member and one handler member, and the third position would alternate between a grower and handler member. Districts that are allocated four members would be entitled to two grower members and two handler members.

The major benefit of this amendment is that it would allow Board membership to be reallocated annually, and thereby more closely reflect changing production trends in the industry. This would include having representation of a district decrease when conditions so warrant.

The following table shows the difference that would have occurred in Board membership for the term of office that began July 1, 2001, if the proposed amendment were in effect compared to the actual representation under current order provisions.

District	Number of members under current provision	Number of members under proposed amendment
1—Northern Michigan	4	4
2—Central Michigan	3	3
3—Southern Michigan	2	2
4—New York	2	2
5—Oregon	1	1
6—Pennsylvania	1	1
7—Utah	2	2
8—Washington	2	2
9—Wisconsin	1	2
Total number of industry members	18	19

If the proposed amendment had been in effect, industry representation on the Board would have increased from 18 to 19 members. Total membership (including the public member) would have increased from 19 to 20 members. Wisconsin would have been entitled to two members rather than one member. Representation of the other eight districts would not have changed.

One witness testified in opposition to this proposal, stating that it would give Michigan more power in Board decisions. However, as the above table shows, Michigan would have gone from having 9 of 18 industry members (50 percent) to 9 of 19 industry members (47 percent). Looking at total membership (including the public member), Michigan would have gone from 9 of 19 seats (47 percent) to 9 of 20 seats (45 percent).

Committee members serve 3-year terms of office. The terms are staggered so that about one-third of the members are selected each year. The terms of office begin July 1 of each year. Final production figures for a crop year are typically available in September, and nominations are conducted early in the calendar year (January or February) for

the term that begins the following July 1. If this amendment is adopted, the Board as constituted at the time of the amendment would remain in effect. Reallocation of membership would take place prior to the next regularly scheduled round of nominations. If, for example, the amendment were to become effective in September 2002, reallocation would take place prior to the nominations scheduled for January or February 2003, for the term of office beginning July 1, 2003.

If a district were to lose a seat, and none of its members' terms were expiring, it would be necessary to determine which member would need to be removed from the Board. Testimony at the hearing suggested that the members of the district in question would likely be able to agree among themselves who should resign. If that proves not to be the case, the Board could recommend rules and regulations concerning how to determine which Board position should be abolished. To provide for this possibility, USDA is recommending that a new paragraph (i) be added to § 930.20 to authorize the establishment of any rules and regulations needed to implement the provisions of that section.

In determining which member should resign, however, it would be necessary to comply with the provisions of § 930.20 pertaining to allocation of membership between grower and handler positions. For example, if a district's representation was reduced from four members (two grower and two handler positions) to three members (two grower positions and one handler position), one of the handler member positions would have to be vacated.

In a related matter, § 930.32 of the order provides that 12 members of the Board constitute a quorum, and that two-thirds of the total membership must vote in favor of any Board action for it to pass.

With the Board initially established at 18 members and with the two-thirds voting requirement, a 12-member quorum was logical (since two-thirds of 18 is 12). However, the proposed revision to § 930.20 would result in a varying number of Board members over time. In the example shown above, the Board would have been expanded to 20 members (19 industry members and 1 public member). The two-thirds voting requirement in that case would require the affirmative votes of at least 14 members to pass any Board action. It would not be reasonable to have the quorum remain at 12 members, since that number of members would not be able to pass a vote. Therefore, it is recommended that § 930.32 be amended to provide that two-thirds of the Board membership constitutes a quorum.

Material Issue Number 3—Board Designation of a Temporary Alternate To Act for an Absent Board Member

The order should be amended to provide more flexibility for a Board member to designate someone to act in his or her place when that member and his or her alternate are unable to attend a Board meeting. However, this discretion should not be given to the Board or its chairperson in the event the member in question chooses not to designate another alternate to serve in his or her place.

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine geographic districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate choose to make such a designation, the Board's chairperson would be free to do so with the concurrence of a majority of present members.

In support of the Board's proposal, witnesses stated that it is important to have a full contingency of members present at each Board meeting to ensure full consideration of and deliberation upon program issues. Further, an empty seat constitutes a ''no'' vote, which could hamper Board decision-making. This is because all Board actions require the approval of at least two-thirds of its members. One witness suggested that without this proposed amendment, Board expenses could increase because additional meetings might be needed due to vacant member seats and the inability to garner the requisite number of votes for Board action.

Witnesses in opposition to this proposal opined that it is very important to maintain representation of all districts at each Board meeting. They stated that Board representation is allocated among the districts because the conditions in those districts vary. The record shows that there have been very few instances where Board members (and their alternates) have been unable to attend a meeting. The few times a seat was empty was when the member from district 5 (Oregon) or district 8 (Washington) was unable to be present due to airline delays because of bad weather or due to personal emergencies. Since most Board meetings are held in Michigan, it is likely that if the Board's proposed amendment had been in place, a person from Michigan would have been asked to fill the empty position. Witnesses from outside the State of Michigan strongly objected to this scenario.

The Department agrees that full participation at Board meetings should be encouraged. However, we also believe there is merit in allocating membership among districts, and that the conditions in one district may vary considerably from those in another. Further, growers and handlers in each district nominate the people they want to represent them at Board meetings. For these reasons, we conclude that a Board member should be able to choose another alternate to serve in his or her place when that member and that member's alternate are unavailable. However, this choice should remain with the member. If he or she chooses not to name someone to fill his or her seat and cast votes on his or her behalf, the choice should not then revert to the Board or its chairperson.

The record supports the conclusion that this proposal is not intended to change the composition of the Board with respect to grower versus handler representation. Therefore, a modification to the proposed amendment is made providing that in naming an additional alternate to act on his or her behalf, a Board member should designate an alternate from the same group (grower or handler) as that member. This would ensure appropriate grower and handler representation on the Board.

The proposed amendment of § 930.28 has been changed accordingly. Also, we have deleted the requirement that a member must choose an alternate ''from another district'' to act in his or her place. This would enable a member who is from a district with more than one member position to designate another alternate from the same district to act in his or her stead. The member would not be required to name an alternate from a different district to fill his or her seat.

Material Issue Number 4—Clarification of Diversion and Exemption Provisions

The diversion and exemption provisions of the order should be

clarified by eliminating certain cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions.

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries may be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for ''uses exempt under § 930.62.'' A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation. This part of § 930.58 would not change.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development received diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

Proponent witnesses asked that the authority in § 930.58 for growers to receive diversion certificates for uses exempt under § 930.62 remain in the order. This authority has been in the order from the time it became effective and would need to be implemented through rulemaking. Presently, grower diversion rules provide for two types of diversion: leaving cherries unharvested and in-orchard tank diversion. It could be possible for the Board to provide (with USDA approval) for a form of grower diversion that would be the same as an exempt use utilized by handlers under § 930.62. The intent would be to encourage growers to find new uses and new markets for their cherries.

To retain this authority, a conforming change is needed in § 930.62. That section of the order is proposed to be changed by, among other things, stating that diversion certificates shall not be issued for cherries used for exempt purposes. This revision was intended to apply to handlers and not to growers seeking diversion certificates for exempt uses. Thus, a clarification is being proposed in the regulatory text of § 930.62.

The Department is also proposing a conforming change in § 930.50 relating to the Board's marketing policy. That provision of the order specifies how free and restricted percentages are to be calculated. The order currently sets forth an ''optimum supply formula'' (OSF) which the Board must follow in its consideration of annual volume regulations. First, the Board considers the available supply of tart cherries, which is the sum of the crop estimate and the carry-in supply from previous crop years. The Board next computes the optimum supply and compares it with the available supply. If the available supply exceeds the optimum supply, a surplus exists, calling for the use of supply controls.

The optimum supply is defined as 100 percent of the average sales of the prior 3 years, reduced by the average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same 3 years. There is no mention of how cherries used for exempt purposes should figure into the equation.

Witnesses testifying at the hearing explained that exempt cherries should be treated in the same way as cherries qualifying for diversion credit in the OSF. That is, they should be deducted from the total sales figure. Paragraph (a) of § 930.50 is proposed to be revised accordingly.

Section 930.59 currently states that in some cases, handlers must notify the Board of their intent to divert cherries, while in other cases they must apply for and receive Board approval prior to diverting cherries. This decision proposes revising this section to provide that in all cases, handlers must notify the Board of their plans to divert cherries. This change was proposed by the Board, and is intended to simplify current procedures. It should be noted, however, that should additional safeguards be needed to ensure compliance with handler diversion procedures (i.e., that cherries receiving diversion credits are actually utilized in approved outlets), the Board has authority to recommend additional rules

and regulations. Such rules and regulations would require USDA approval through the informal rulemaking process.

The authority for this additional rulemaking is currently provided in §§ 930.30 and 930.31 of the order. These sections set forth the Board's powers and duties, which include recommending rules and regulations needed to effectively administer the provisions of the order. As a clarifying change, a new paragraph (f) is proposed to be added to § 930.59 to specify that the Board may establish (with USDA approval) rules and regulations necessary and incidental to the administration of the handler diversion provisions of the order.

One final conforming change is being proposed by the Department relative to the provisions concerning diversions and exemptions. At the hearing, it was clearly stated that if certain uses of cherries were exempt from regulation, handlers should be able to use cherries from their inventory reserves for those uses at any time. While this is currently permitted under the terms of § 930.62, we are proposing a clarifying change in § 930.54, Prohibition on the use or disposition of inventory reserve cherries. That section is also being proposed to be revised by deleting a reference to a nonexistent paragraph (b) of that section.

Material Issue Number 5—Exemption or Diversion Credit for Export Shipments

The order should be amended to provide specific authority to designate shipments to certain export markets as exempt or eligible for diversion credit.

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as being eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers in recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits has resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only.

Material Issue Number 6—Diversion Credit for Juice and Juice Concentrate

The order should be amended to provide that sales of cherry juice and juice concentrate may receive diversion credits if those sales are in outlets that have been designated as eligible for receipt of diversion credits.

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the proviso in § 930.59 (b) so that shipments of cherry juice and juice concentrate to approved diversion outlets may be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in the Pacific Northwest have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace could have resulted in an accompanying reduction in prices for juice. This could have unduly harmed the industry in Washington and Oregon. USDA therefore inserted a provision in § 930.59 to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with the order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00—$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was

about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was important that handlers in Washington be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

It should be noted that the intent of this amendment proposal is to make sales of juice and juice concentrate eligible for diversion credit only if those sales are in outlets that have been approved for diversion credit. Sales of juice and juice concentrate in the primary market would not be eligible for diversion credit. This would prevent the influx of heavy supplies of juice into primary markets, which would have the potential to harm processors who rely on a healthy juice market.

The Department is proposing that § 930.59 be amended by deleting the proviso in paragraph (b) of that section. We are also proposing a clarifying change in that paragraph to state that shipments of juice and juice concentrate would only be eligible for diversion credit if they are used in markets specifically approved as diversion outlets.

Material Issue Number 7—Handler Transfers of Diversion Credits

The order should be amended to provide specific authority for handlers to be able to transfer diversion credits.

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that this authority would provide additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This authority could also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversion to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversion (pounds)	Excess diversions credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversion (pounds)	Excess diversions credits (pounds)
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use. Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	''Free'' sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of ''free'' cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products.

The Board's proposal included the statement that transfers of handler diversion credits be allowed ''Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer * * *'' Testimony at the hearing indicated that rules to implement this transfer authority may be needed. The only example given was that uniform reporting requirements may be necessary (i.e., to make sure that handlers record transfers in the same way so that diversion credits are not counted to offset more than one handler's restricted obligation). No witnesses gave any examples of limitations on transfers that may be needed, but they wanted the flexibility to do that in the future if the need arises.

No opposition to this proposal was stated at the hearing or in the briefs filed.

This amendment would be implemented by adding a new paragraph (e) to § 930.59 to specifically authorize the transfer of handler diversions certificates.

Material Issue Number 8—Grower Diversion Certificates

The order should be amended to provide that diversion certificates issued by the Board to a grower remain valid even if that grower's district subsequently becomes exempt from volume regulation under § 930.52(d).

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers are already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy meeting is typically held a week or two after the release of the official USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete.

This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and it Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

There was no opposition to this proposed amendment expressed at the hearing or in the briefs filed after the hearing.

To implement this proposal, it is recommended that § 930.58(a) be revised by adding a sentence to that paragraph.

Material Issue Number 9—Release of Cherries in the Inventory Reserve

The order should be amended to provide that cherries in the inventory reserve may be released either for use in any market or for use in only certain designated markets, depending on prevailing market conditions.

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54 (a). The first, under § 930.50 (g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes, and is discussed more fully under Material Issue Number 10.

The second release, under § 930.50 (j) occurs in years when the expected availability from the current crop plus expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be ''free'' percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

There was no opposition to this proposed amendment.

The Department is recommending this proposal be implemented by adding a new paragraph (b) to § 930.54 to say that reserve cherries may be released for sale in certain designated markets. We are proposed adding a sentence to that new paragraph to state that these designated markets may be defined in terms of the use or form of cherries.

Material Issue Number 10—Ten Percent Reserve Release for Market Expansion

The order should be amended to provide that the 10-percent reserve release for market expansion apply only

during years when volume regulations are in effect.

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at the handler's facility, or shipment into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an ''optimum supply'' of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the optimum supply of free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10-percent reserve release only apply during years when volume regulations are in effect.

The record shows that the 10-percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10-percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more importantly, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversion (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the affects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

There was no opposition to this Board proposal expressed at the hearing or in the briefs filed.

The Department recommends amending § 930.50(g) to specify that when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. This release would not be required in years when restricted percentages are not established.

Material Issue Number 11—Assessments on All Cherries Handled

The order should be amended to provide that assessments be imposed on all cherries processed and sold by handlers. The only cherries that would not be assessed would be those diverted by handlers by destruction at their facilities and those diverted by growers in the orchard.

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their *pro rata* share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. If a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. It was concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses are incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (*e.g.,* new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

No objections were raised at the hearing or in the briefs concerning this amendment.

The Department proposes that § 930.41(c) be revised to state that assessments are due on all cherries handled except for those that are diverted by destruction at a handler's facility or are represented by valid grower diversion certificates. A conforming change is proposed in § 930.62 of the order which relates to exempt shipments. A conforming change is also proposed in § 930.51(c) which refers to diverted cherries being exempt from assessments.

Material Issue Number 12—Uniform Assessment Rate

The order should be amended to eliminate the requirement that different assessment rates be established for cherries used for manufacturing different products.

As discussed in the preceding material issue, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it take approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the recommended amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis. Paragraph (f) of § 930.41 has been revised accordingly.

Material Issue Number 13—Crop Production Estimate

The order should be amended to provide that the Board may use estimates other than the official USDA crop estimate in developing its annual marketing policy.

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the ''optimum supply'' which is defined as the average sales of cherries in the past three years plus the desirable carry-

out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by the States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces over 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

No opposition was expressed regarding this proposed amendment authorizing the Board to use estimates other than the official USDA estimates.

The Department is therefore recommending this change through a proposed amendment to § 930.50(b).

Conforming Changes

The Agricultural Marketing Service proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. Necessary conforming changes have been identified and discussed in this Recommended Decision under the pertinent material issue.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments could result in additional regulatory requirements being imposed on some tart cherry handlers, while regulatory burdens on other handlers could be reduced. Overall benefits are expected to exceed costs.

The record indicates that there are about 40 handlers regulated under Marketing Order No. 930. In addition, there are about 905 producers of tart cherries in the production area.

The record indicates that of the 41 tart cherry handlers operating during the 1999–2000 season, 7 had processed tonnage of more than 10 million pounds (or 17 percent of all handlers); 8 had between 5.1 and 10 million pounds (20 percent); 12 had between 2.1 and 5 million pounds (29 percent); and the remaining 14 had less than 2 million pounds of processed tonnage (34 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities.

Twenty handlers are located in Michigan—nine in district 1 (Northern Michigan), eight in district 2 (Central Michigan) and three in district 3 (Southern Michigan). Of the remaining 21 handlers, 4 are in district 4 (New York), 3 are in district 5 (Oregon), 1 is in district 5 (Pennsylvania), 3 are in district 7 (Utah), 5 are in district 8 (Washington), and 5 are in district 9 (Wisconsin). Many handlers process cherries grown in more than one district.

Of the 904 growers who produced cherries in 1999, 368 were in Northern Michigan (41 percent), 149 were in Southern Michigan (16 percent), 129 percent in Central Michigan (14 percent), 84 in New York (9 percent), 65 in Wisconsin (7 percent), 38 in Utah (4 percent), 29 in Pennsylvania (3 percent), 27 in Oregon (3 percent), and 17 in Washington (2 percent).

During the 3-year period 1999–2001, production of tart cherries averaged 300.6 million pounds. By district, Northern Michigan accounted for 44.0 percent of the production, followed by Central Michigan with 22.4 percent, Southern Michigan with 8.7 percent, Utah and Washington each with 6.6 percent, New York with 5.3 percent, Wisconsin with 3.4 percent, Pennsylvania with 1.7 percent, and Oregon with 1.3 percent.

Dividing total production by the number of growers, the average grower produces about 332,500 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $66,500. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition that was in effect at the time of the hearing. The evidence of record is that only 13 growers (or less than 2 percent of the total number of growers) produced 2.5 million pounds or more during the 1999–2000 crop year. Five of those growers (or 38 percent) were located in Northern Michigan (district 1) and three operated (23 percent) in Central Michigan (district 2). The remaining five growers in this category (38 percent) were distributed among the remaining seven districts. The distribution of large growers is thus in proportion to the overall distribution of growers among the districts.

A large majority (more than 98 percent) of the tart cherry growers falls into the previous SBA definition of a small entity (annual receipts of less than $500,000); it is reasonable to assume that an even greater majority qualify under the current SBA definition of a small grower (annual receipts of less than $750,000).

During the 3 years 1999 to 2001, the average grower accounted for about 333,000 pounds of cherries. By district, average grower size varies considerably. The average grower in Washington accounts for roughly 1,159,000 pounds of cherries. Next in size is Central Michigan with 530,000 pounds, followed by Utah (518,000 pounds), Northern Michigan (360,000 pounds), New York (191,000 pounds), Pennsylvania (179,000 pounds), Southern Michigan (177,000 pounds), Wisconsin (155,000 pounds) and Oregon (141,000 pounds).

This decision recommends that the order be amended: (1) To provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation rather than only those with annual production in excess of 15 million pounds; (2) To allocate Board membership among districts based on levels of production and make a corresponding change in quorum requirements; (3) To authorize a Board member to designate any alternate to serve for that member at a Board meeting in the event the member and his or her alternate are unavailable; (4) To clarify the diversion and exemption provisions of the order by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions; (5) To add specific authority to the order to exempt or provide diversion credit for cherries exported to designated markets; (6) To provide diversion credit for shipments of cherry juice and juice concentrate to established diversion markets; (7) To add specific authority for the transfer of diversion credits among handlers; (8) To provide that grower diversions that take place in districts that are subsequently exempt from volume regulation qualify for diversion credit; (9) To allow cherries in the inventory reserve to be released for use in only certain designated markets; (10) To specify that the 10-percent reserve release for market expansion only applies during years when volume regulations are in effect; (11) To require assessments to be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by a grower diversion certificate; (12) To eliminate the requirement that differential assessment rates be established for various cherry products based on the relative market values of such products; and (13) To allow the Board should to use an estimate other than the official USDA crop estimate in developing its marketing policy.

Industry Background

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995–96 through 1999–00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987–88 through 1997–98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999–00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999–00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop years 1987–88 through 1999–00, tart cherry production ranged from a high of 396.0 million pounds in 1995–96 to a low of 189.9 million pounds in 1991–92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude

of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since most tart cherries are either canned or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies. In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry would result in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

The free and restricted percentages established under the order release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from operation of the marketing order program are difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Districts Subject to Volume Regulation

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criteria for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150 Percent
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon have reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also

unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more importantly, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (*e.g.,* harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversion.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	Percent	Price	Income
Open Market	240,000	60	$0.14	$33,600
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100	.....	45,040
For a grower in a non-regulated district, income was estimated as follows:				
Open Market	400,000	100	0.135	54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

Witnesses stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (e.g., susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that was comprised of older trees in 1998.

State	Percent acreage 21–25 years	Percent acreage 26+ years	Percent total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already ''done their part'' to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15-million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

Allocation of Board Membership

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. The Board consists of 19 members: 18 tart cherry growers and handlers, and 1 public member.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. Six of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), Utah (two members), and Washington (two members). The three districts with one member each are Oregon, Pennsylvania, and Wisconsin. The nineteenth Board member is selected to represent the general public, and need not be from any specific area.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation, that district will get a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that this amendment could result in a larger number of Board members. Using average annual production figures for the years 1999 through 2001, one district (Wisconsin) would have been entitled to an additional Board member position for the term of office that began July 1, 2000. Thus, the total number of Board members under this proposed amendment would have increased to 20 members (versus 19 members under the provisions currently in effect).

An increase in the number of Board members would result in a marginal increase in Board expenses. This is because the Board reimburses members for costs incurred in attending Board meetings (travel costs, etc.). Since Board expenses are funded through handler assessments, all handlers would be impacted by slightly higher assessments.

However, these slight cost increases will be offset by better industry representation on the Board. Reallocating membership on an annual basis will allow membership to more closely reflect changing production trends in the industry. This should lead to better decision making by a more representative administrative body.

Designation of a Temporary Alternate To Act for an Absent Board Member

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate choose to make such a designation, the Board's chairperson would be free to do so (with the concurrence of a majority of present members).

The record supports the concept of allowing more flexibility for alternates to fill in for absent Board members. However, the Department is recommending a revision in the Board's proposal. This decision proposes allowing a Board member to designate an additional alternate to act in his or her place when that member and that member's alternate are unable to attend a Board meeting. However, if the member chooses not to name an additional alternate, that decision would not then revert to the Board or its chairperson.

This proposed amendment would allow more flexibility for Board members who cannot attend a Board meeting. It should also encourage a full contingency of voting members at Board meetings, while maintaining adequate representation among the districts comprising the production area. No additional costs should be incurred as a result of this change.

Clarification of Diversion and Exemption Provisions

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries must be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for ''uses exempt under § 930.62.'' A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development were eligible for diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from

regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

This proposed amendment is a clarification of the current order and its operation. It would not introduce new or different concepts. To the extent that it makes the order easier for growers and handlers to understand, it should be of benefit to the industry.

Exemption or Diversion Credit for Export Shipments

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as being eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers during recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only. It would impose no new or different regulatory requirements on the tart cherry industry.

Diversion Credit for Juice and Juice Concentrate

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the prohibition in § 930.59 (b) that shipments of cherry juice and juice concentrate to approved diversion outlets be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in that area of the country have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace and an accompanying reduction in juice prices could result. This would unduly harm the industry in the Washington and Oregon. USDA therefore inserted the provision to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00—$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the

U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5+1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was critical for handlers in Washington to be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

This proposed amendment would result in additional options for handlers in meeting their restricted obligations under the order. It would also encourage expansion of markets for U.S. tart cherry products, which should benefit the industry as a whole. It would not adversely impact the sale of juice and juice concentrate in primary markets; in fact, it could tend to strengthen prices in those markets. This is because more juice would likely be exported, which would reduce the supply available in the domestic market.

Handler Transfers of Diversion Credits

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that allowing transfers of diversion certificates provides additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This can also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversion to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversions (pounds)	Excess diversion credits (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use.

Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	"Free" Sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of ''free'' cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products. Allowing transfers of diversion certificates therefore has a positive impact on the industry.

Grower Diversion Certificates

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy is typically a week or two after the release of the USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete. This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

This amendment should benefit tart cherry growers who choose to divert cherries in anticipation of a volume regulation. It should also contribute to the supply management objectives of the program, which would benefit the U.S. tart cherry industry as a whole.

Release of Cherries in the Inventory Reserve

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54(a). The first, under § 930.50(g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes.

The second release, under § 930.50(j) occurs in years when the expected availability from the current crop plus

expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be ''free'' percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Ten Percent Reserve Release for Market Expansion

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an ''optimum supply'' of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10 percent reserve release only apply during years when volume regulation is in effect.

The record shows that the 10 percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10 percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more importantly, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversion (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the affects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Assessments on All Cherries Handled

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their pro rata share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. It was their opinion that if a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. Those in support of assessing all processed cherries concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses are incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (e.g., new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

This amendment would increase assessment obligations on handlers who choose to divert their restricted percentage cherries in approved outlets. However, it would also tend to result in a more reasonable assessment system.

Uniform Assessment Rate

As discussed in the preceding section, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In

their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it take approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the recommended amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis.

Implementation of this amendment could result in a single, uniform assessment rate applicable to all cherries. Such action would likely increase the rate established for cherries used for juice concentrate and puree, and could result in a lower rate for cherries used for other products. The impact of any such action would be analyzed by the Board and USDA prior to its effectuation.

Crop Production Estimate

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the ''optimum supply'' which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by those States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces over 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

The record shows that the USDA estimate should be used by the Board unless two things happen. The first would be that the Board would have to agree that the USDA estimate was inaccurate. The second would be that the Board would have to agree on another estimate or estimates to use. Both these actions would require concurrence by at least two-thirds of the Board members. This would safeguard against the possibility of some members attempting to manipulate the crop estimate to impact the level of volume restriction.

In addition, witnesses testified that other estimates used by the Board would have to be from other reliable, independent sources, and would be averaged in with the USDA estimate. Currently available is an annual estimate made by the Michigan Food Processors Association. Other possible sources include the Michigan Agricultural Cooperative Marketing Association and individual State grower associations.

This proposed amendment provides the Board with more flexibility in developing its marketing policy and

recommending preliminary free and restricted percentages. To the extent that the Board's decision making improves, the entire U.S. tart cherry industry would benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate so that this rulemaking may be completed prior to the upcoming season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order and the previously issued amendment thereto. All said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Recommended Amendment of the Marketing Agreement and Order

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

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

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

Authority: 7 U.S.C. 601–674.

2. Amend § 930.20 as follows:

a. By revising paragraphs (a), (b), (d) and (e);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and

c. Adding new paragraphs (f) and (i).

The additions and revisions read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the membership of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous

three year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members;

(4) Greater than 80 million pounds shall have 4 members; and

(5) Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members or	Handler members
Up to and including 10 million pounds	1	1
More than 10 and up to 40 million pounds	1	1
More than 40 and up to 80 million pounds	1	2
More than 80 million pounds	2	2

* * * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handlers members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to a district, then the Board shall be reestablished by the Secretary, and such seats shall be filled according to the applicable provisions of this part.

* * * * *

(i) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

3. Revise § 930.28 to read as follow:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided,* that such alternate represent the same group (grower or handler) as the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

4. Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

5. Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

* * * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided,* a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

* * * * *

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

* * * * *

6. Amend § 930.50 by revising paragraphs (a), (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: From the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated over-production which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

* * * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in

paragraph (a) of this section, for market expansion.

* * * * *

7. Amend § 930.51 by revising paragraph (c) to read as follows:

§ 930.51 Issuance of volume regulations.

* * * * *

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year.

* * * * *

8. Amend § 930.52 by revising paragraph (a) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 3 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 3-year period in which the 6-million pound average production requirement is exceeded in that district.

* * * * *

9. Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraphs (a), (b), or (c) of this section.

(a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets. Such designated markets may be defined in terms of the use or form of the cherries.

(c) Cherries in the primary and/or secondary inventory reserve may be used at any time for uses exempt from regulation under § 930.62.

10. Amend § 930.58 by revising paragraph (a) to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

11. Revise § 930.59 to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

12. Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) experimental purposes; or

(4) for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year

average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided,* that growers engaging in such activities under the authority of § 930.58 shall be issued diversion certificates for such activities.

Dated: January 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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Federal Register

Thursday,
January 24, 2002

Part III

The President

Proclamation 7518—Martin Luther King, Jr., Federal Holiday, 2002

Proclamation 7519—National Mentoring Month, 2002

Proclamation 7520—National Sanctity of Human Life Day, 2002

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7518 of January 17, 2002

Martin Luther King, Jr., Federal Holiday, 2002

By the President of the United States of America

A Proclamation

For too brief a time, our Nation was blessed by the life of Dr. Martin Luther King, Jr. Dr. King was a modern American hero whose leadership rallied people of all races to rise up against injustice. His commitment to stand peacefully for the conviction that all men are created equal brought about changes in the laws of our Nation, and he paid the ultimate price for the courage he demonstrated in attempting to ensure that all men and women were treated equally in the eyes of the law and by their fellow citizens. It is with a great sense of pride and gratitude that we celebrate this 17th national holiday in honor of Dr. King's life and work. Let us take this opportunity to recall his vision and renew his call for equal justice for all.

We enter this new year and this annual celebration with a revived national spirit. The events of September 11, 2001, have drawn us closer as a Nation and increased our resolve to protect the life and liberty we cherish. And while our patriotism and neighborly affections run high, these circumstances have given us renewed purpose in rededicating ourselves to Dr. King's ''dream.'' As he said on the steps of the Lincoln Memorial on August 28, 1963: ''I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by content of their character.'' Dr. King's words were not just a call to change our laws, but they also served as a challenge to all Americans to change their hearts by refusing to judge people by their skin color or their national origin, by their race or their religion. For while we have made progress, there is much work to be done, both at home and abroad.

In the face of massive injustice, Dr. King's unwavering commitment to nonviolent means of bringing the people of our Nation together provided a foundation for healing and trust. That trust brought us through our recent tragedy as we reached out to each other without regard to race or religion. Dr. King spent his life working for those who held the uncelebrated jobs in our communities—people who simply performed their work with dignity and pride. The words from his Nobel Peace Prize acceptance speech of 1964, spoken about the workers in the freedom movement, still ring true for those men and women who unselfishly attempted to rescue innocent persons in the World Trade Center buildings and at the Pentagon:

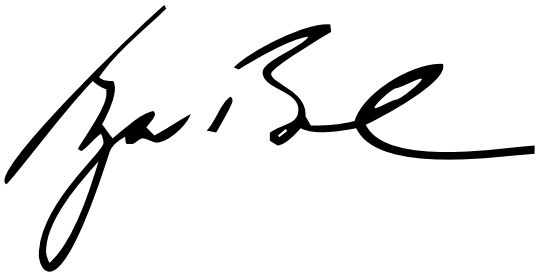
Most of these people will never make the headlines and their names will not appear in Who's Who. Yet when years have rolled past and when the blazing light of truth is focused on this marvelous age in which we live—men and women will know and children will be taught that we have a finer land, a better people, a more noble civilization—because these humble children of God were willing to suffer for righteousness' sake.

We are so thankful for those ''humble children of God,'' and we are thankful for the life and times of Dr. Martin Luther King, Jr. His abiding faith in America has helped us become a fairer and more colorblind society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim Monday, January 21, 2002, as the Martin Luther King, Jr., Federal Holiday. I encourage Americans to observe this day with appropriate community programs, gatherings, and civic activities that honor the memory and the legacy of Dr. King.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Proclamation 7518 of January 17, 2002

Martin Luther King, Jr., Federal Holiday, 2002

By the President of the United States of America

A Proclamation

For too brief a time, our Nation was blessed by the life of Dr. Martin Luther King, Jr. Dr. King was a modern American hero whose leadership rallied people of all races to rise up against injustice. His commitment to stand peacefully for the conviction that all men are created equal brought about changes in the laws of our Nation, and he paid the ultimate price for the courage he demonstrated in attempting to ensure that all men and women were treated equally in the eyes of the law and by their fellow citizens. It is with a great sense of pride and gratitude that we celebrate this 17th national holiday in honor of Dr. King's life and work. Let us take this opportunity to recall his vision and renew his call for equal justice for all.

We enter this new year and this annual celebration with a revived national spirit. The events of September 11, 2001, have drawn us closer as a Nation and increased our resolve to protect the life and liberty we cherish. And while our patriotism and neighborly affections run high, these circumstances have given us renewed purpose in rededicating ourselves to Dr. King's ''dream.'' As he said on the steps of the Lincoln Memorial on August 28, 1963: ''I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by content of their character.'' Dr. King's words were not just a call to change our laws, but they also served as a challenge to all Americans to change their hearts by refusing to judge people by their skin color or their national origin, by their race or their religion. For while we have made progress, there is much work to be done, both at home and abroad.

In the face of massive injustice, Dr. King's unwavering commitment to nonviolent means of bringing the people of our Nation together provided a foundation for healing and trust. That trust brought us through our recent tragedy as we reached out to each other without regard to race or religion. Dr. King spent his life working for those who held the uncelebrated jobs in our communities—people who simply performed their work with dignity and pride. The words from his Nobel Peace Prize acceptance speech of 1964, spoken about the workers in the freedom movement, still ring true for those men and women who unselfishly attempted to rescue innocent persons in the World Trade Center buildings and at the Pentagon:

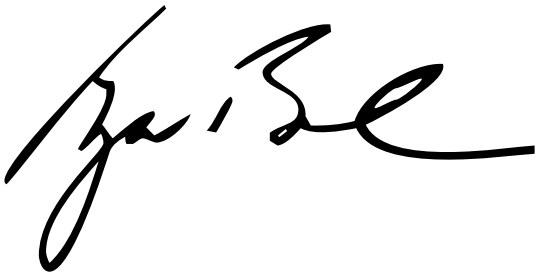
Most of these people will never make the headlines and their names will not appear in Who's Who. Yet when years have rolled past and when the blazing light of truth is focused on this marvelous age in which we live—men and women will know and children will be taught that we have a finer land, a better people, a more noble civilization—because these humble children of God were willing to suffer for righteousness' sake.

We are so thankful for those ''humble children of God,'' and we are thankful for the life and times of Dr. Martin Luther King, Jr. His abiding faith in America has helped us become a fairer and more colorblind society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim Monday, January 21, 2002, as the Martin Luther King, Jr., Federal Holiday. I encourage Americans to observe this day with appropriate community programs, gatherings, and civic activities that honor the memory and the legacy of Dr. King.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–1969
Filed 1–23–02; 8:45 am]
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Presidential Documents

Proclamation 7519 of January 18, 2002

National Mentoring Month, 2002

By the President of the United States of America

A Proclamation

National Mentoring Month allows us to recognize the important contributions made by the millions of our fellow citizens who choose to strengthen our Nation by giving their time, effort, and heart to serve as a mentor and role model for a young person. Through quality education programs, community initiatives, and personal involvement, mentors help our children become better citizens by showing them how to make the right choices, to work hard, and to care for their neighbors in need. Mentors play an important role in a child's life, particularly if a parent is absent. A mentor's involvement in the life of a child can brighten that child's future, help maintain healthy families, and help promote more vibrant communities.

Community mentoring programs have given millions of young people, particularly those at high-risk for poor school performance and behavior problems, a boost in life. Statistics indicate that most children who have been mentored improve their school attendance and performance, go to college, and are less likely to use drugs or alcohol. By being a positive role model, a mentor can demonstrate the blessings of living a virtuous life by sharing their values and experiences and motivating a child to learn and achieve. We must teach our children the difference between right and wrong; and we must seize every opportunity to help a young person find the right path. We must also teach discipline and accountability.

Many adults recall lessons they learned from childhood as a result of observing and interacting with role models. They recognize their childhood homes and schools as places where love, encouragement, and instruction provided them with the tools they needed to become contributing citizens. Today, the role of families, schools, and communities remains crucial to providing stability and direction to America's young people.

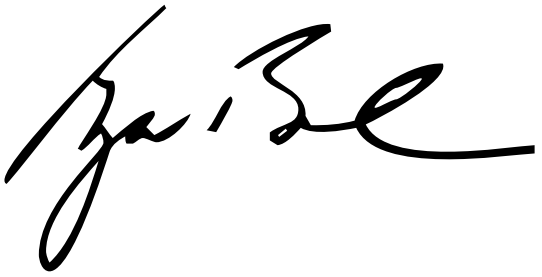
My Administration strongly supports Federal, State, and local programs that help families stay together, keep both parents involved in their child's life, and utilize our education system to stand by parents and reinforce the values that are taught in the home. I am particularly pleased that the Congress passed and I have signed into law legislation I proposed to strengthen and expand successful mentoring initiatives aimed at serving a vulnerable population: children whose parents are incarcerated. This new initiative—''Promoting Safe and Stable Families Amendments of 2001''—represents the first comprehensive Federal effort to improve the lives of these children. This important legislation will help surround vulnerable youth with positive, one-on-one role models, and help them not just dream big dreams, but achieve them.

On the occasion of National Mentoring Month, we pay tribute to the parents, teachers, community leaders, and citizens who serve as mentors and role models for our children. We encourage others to become involved in mentoring.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2002 as National

Mentoring Month. I call upon the people of the United States to recognize the importance of being role models for our youth, to look for mentoring opportunities in their communities, and to celebrate this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–1970
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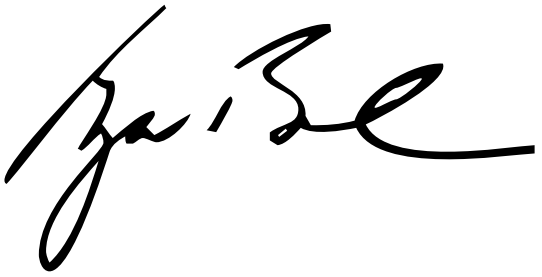

[FR Doc. 02–1970
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Presidential Documents

Proclamation 7520 of January 18, 2002

National Sanctity of Human Life Day, 2002

By the President of the United States of America

A Proclamation

This Nation was founded upon the belief that every human being is endowed by our Creator with certain ''unalienable rights.'' Chief among them is the right to life itself. The Signers of the Declaration of Independence pledged their own lives, fortunes, and honor to guarantee inalienable rights for all of the new country's citizens. These visionaries recognized that an essential human dignity attached to all persons by virtue of their very existence and not just to the strong, the independent, or the healthy. That value should apply to every American, including the elderly and the unprotected, the weak and the infirm, and even to the unwanted.

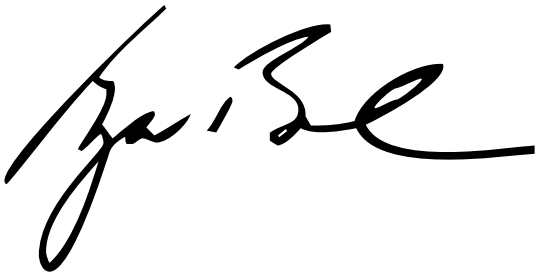
Thomas Jefferson wrote that, ''[t]he care of human life and happiness and not their destruction is the first and only legitimate object of good government.'' President Jefferson was right. Life is an inalienable right, understood as given to each of us by our Creator.

President Jefferson's timeless principle obligates us to pursue a civil society that will democratically embrace its essential moral duties, including defending the elderly, strengthening the weak, protecting the defenseless, feeding the hungry, and caring for children—born and unborn. Mindful of these and other obligations, we should join together in pursuit of a more compassionate society, rejecting the notion that some lives are less worthy of protection than others, whether because of age or illness, social circumstance or economic condition. Consistent with the core principles about which Thomas Jefferson wrote, and to which the Founders subscribed, we should peacefully commit ourselves to seeking a society that values life—from its very beginnings to its natural end. Unborn children should be welcomed in life and protected in law.

On September 11, we saw clearly that evil exists in this world, and that it does not value life. The terrible events of that fateful day have given us, as a Nation, a greater understanding about the value and wonder of life. Every innocent life taken that day was the most important person on earth to somebody; and every death extinguished a world. Now we are engaged in a fight against evil and tyranny to preserve and protect life. In so doing, we are standing again for those core principles upon which our Nation was founded.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Sunday, January 20, 2002, as National Sanctity of Human Life Day. I call upon all Americans to reflect upon the sanctity of human life. Let us recognize the day with appropriate ceremonies in our homes and places of worship, rededicate ourselves to compassionate service on behalf of the weak and defenseless, and reaffirm our commitment to respect the life and dignity of every human being.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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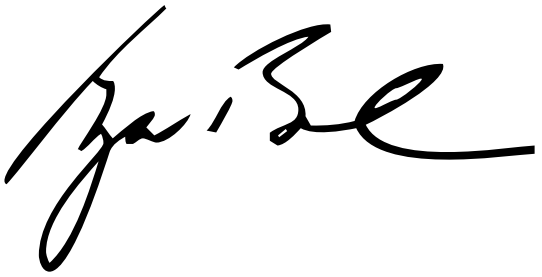

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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. 2873/P.L. 107–133

Promoting Safe and Stable Families Amendments of 2001 (Jan. 17, 2002; 115 Stat. 2413)

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